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IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM OVERTON, Director of Michigan Department of Corrections; MICHIGAN DEPARTMENT OF CORRECTIONS,

Petitioners,

vs.

MICHELLE BAZZETTA, et al.,

Respondents.

On Writ of Certiorari to
The United States Court of Appeals for the Sixth Circuit

AMICUS CURIAE BRIEF OF THE STATES OF COLORADO, ALABAMA, FLORIDA, GEORGIA, IDAHO, INDIANA, MARYLAND, MISSISSIPPI, MISSOURI, NEBRASKA, NEVADA, NORTH DAKOTA, OKLAHOMA, OREGON, PENNSYLVANIA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, AND WYOMING IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

This brief is limited to the second question certified by the Court: Whether the restrictions on non-contact prison visitation imposed by the Michigan Department of Corrections are reasonably related to legitimate penological interests.

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INTEREST OF *AMICUS CURIAE*

This case concerns whether a prison regulation allowing the suspension of non-contact visitation for inmate misconduct violates the United States Constitution. Many state departments of corrections have adopted similar visitation restrictions and have a substantial interest in retaining their programs. All state departments of corrections have a substantial interest in retaining the option of implementing such a program as a prison management tool. More generally, the states have an exceptionally strong interest in managing their penal institutions without undue interference, supervision, or disruption.

SUMMARY OF ARGUMENT

Historically, the Court has afforded substantial deference to prison officials in the administration of state prisons. The Sixth Circuit's decision unduly interferes with the authority of states to determine how to further legitimate and neutral penological goals and undermines the expert judgment of correctional officials. This Court's review of the Sixth Circuit's ruling will have practical consequences for numerous states in which correctional officials have determined that the suspension of non-contact visitation for inmate misconduct furthers these important goals.

The suspension or termination of non-contact visitation for inmates who violate prison rules proscribing the use or possession of illegal substances promotes the internal security of prisons, inmate rehabilitation, and inmate management generally. Unless correctional officials can take meaningful steps to curb drug use by inmates, including punitive measures, the omnipresent problem of drugs in prisons will persist.

ARGUMENT

The Experience and Practices of Other States Confirms that Michigan's Restrictions on Non-Contact Prison Visitation are Reasonably Related to Legitimate Penological Interests

A. This Court applies a deferential reasonableness standard when reviewing state prison practices

This Court has long recognized that "'[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.'" *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987) (quoting *Price v. Johnston*, 334 U.S. 266, 285 (1948)). Accordingly, even if this Court were to hold that prisoners have a constitutional right to non-contact visitation under the First and Fourteenth Amendments, that does not mean states may not suspend such visitation in appropriate circumstances. To the contrary, an inmate's constitutional rights may be either limited or retracted when the essential goals of prison security, order, and discipline are implicated. *Bell v. Wolfish*, 441 U.S. 520, 546-47 (1979).

In *Turner v. Safley*, 482 U.S. 78, 89 (1987), this Court held that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." The use of a reasonableness inquiry -- as opposed to some form of heightened scrutiny -- reflects the Court's longstanding recognition that problems facing prisons "are complex and intractable" and "not readily susceptible of resolution by decree." *Procunier v. Martinez*, 416 U.S. 396, 405 (1974),

overruled on other grounds, *Thornburgh v. Abbott*, 490 U.S. 401, 413-14 (1989). The Court has therefore traditionally deferred to the judgment and expertise of state correctional officials when evaluating whether specific prison practices violate the Constitution or are a permissible infringement on prisoners' constitutional rights. *See, e.g., Lewis v. Casey*, 518 U.S. 343, 361 (1996); *Thornburgh*, 490 U.S. at 407-08; *O'Lone*, 482 U.S. at 349-50; *Hewitt v. Helms*, 459 U.S. 460, 467 (1983). Absent such deference, there is a danger "that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand." *Turner*, 482 U.S. at 89.

The deference accorded to prison officials ensures that they "remain the primary arbiters of the problems that arise in prison management." *Shaw v. Murphy*, 532 U.S. 223, 230 (2001). This is because prison problems "require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Martinez*, 416 U.S. at 405. Mere disagreement with correctional officials about decisions made in the interest of security does not permit federal courts to substitute their judgment for the judgment of prison administrators, who are experts in their field. *Bell*, 441 U.S. at 554; *see also Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 128 (1977). Prophylactic measures intended to forestall security threats are also entitled to this deference. *Whitley v. Albers*, 475 U.S. 312, 322 (1986).

The requirement that courts defer to prison officials is even more pronounced when the regulation being scrutinized pertains to the entry of contraband into prisons. *Thornburgh*, 490 U.S. at 416. For this reason, regulations concerning visitation are entitled to the utmost deference. *Block v. Rutherford*, 468 U.S. 576, 584-85 (1984). Once a

court finds that there are factors counseling against visitation, it must defer to prison officials. *Id.* at 589.

B. Correctional officials across the country have concluded that it is reasonable to punish inmate misconduct by suspending non-contact visitation

The collective judgment of correctional officials throughout the nation is surely relevant to the determination whether the practice of the Michigan Department of Corrections ("MDOC") at issue is a reasonable one, because the reasonableness inquiry requires courts to determine whether the challenged practice is arbitrary or irrational. *See Turner*, 482 U.S. at 89-90. A review of practices across the country shows that Michigan's decision to suspend non-contact visitation as a disciplinary tool is manifestly reasonable.

The justifications for suspending visitation vary from state to state. In their considered and expert judgment, correctional officials have determined that the suspension of visitation can further all of the important penological interests recognized by this Court: security, order, rehabilitation, discipline, inmate management, inmate welfare, and public safety.[1]

[1] *See, e.g.*, Colo. Dept. of Corrections Administrative Regulation 300-01.IV.L.10 (7/1/02) (visitation suspended for inmates who commit drug offenses because of the "serious threat to the security of all correctional facilities or offices") (App. p. b1); Fla. Admin. Code Rules 33-601.731(1)-(5) (5/27/02), 33-601.735 (11/18/01) (visitation suspension a "management tool," and non-contact visits allowed when consistent with "the security and good order of the institution") (App. pp.c1-c4); Ga. Admin. Code 125-3-4-.01 (3/31/01) (discipline and security) (App. p. d1); Ia. Dept. of Corrections Policy Nos. IN-V-122(VI) (10/00) & IN-V-36(I) (12/00) (security, order, inmate welfare, inmate health, and discipline) (App. pp. e1-e2); Minn. Dept. of Corrections Directive 302.100 (5/1/02) (security) (App. p. g1); N.H. Dept. of Corrections PPD 7.9(III), (IV)(D) & IV(P) (7/1/02) (security, exclusion of contraband, inmate and staff welfare, and discipline) (proclaiming that "[a] drug free environment is essential to recovery and to a safe institution for inmates to live in and staff to work in") (App. pp. i1-i2); N.Y. Comp. Codes R. & Regs. tit. 7, § 200.5(a) (4/1/02) (safety, security, and order) (App. p. j1); S.C. Dept. of Corrections OP-22.09 (10/30/98) (safety, security, and order) (App. p. n1); Ohio Dept. of Rehabilitation and Correction § 308, No. 4, Pts. II & V (7/10/02) ("zero tolerance" policy promoting public safety, inmate accountability, and institutional control) (App. p. l1); R.I. Admin. Code 06.070.004 Pt. I (7/12/99) (security and order) (App. p. m1).

A number of states besides Michigan progressively suspend or terminate visitation when inmates have committed multiple drug offenses.

- Following a third drug-related disciplinary offense, a Colorado inmate loses all visitation for three years. Colo. Dept. of Corrections Administrative Regulation 300-01.IV.L.10.c (7/1/02) (App. p. b1).

- California imposes progressive discipline for the unauthorized possession of controlled substances; a third offense results in a loss of all visits for 180 days. Cal. Admin. Code title 15, §§ 3315(f)(5)(I) & 3323(d)(6) (2002) (App. pp. a1-a2). Distribution of drugs by an inmate results in a one-year loss of visitation followed by two years of non-contact visits.

Cal. Admin. Code title 15, §§ 3315(f)(5)(H) & 3323(c)(7) (2002) (App. pp. a1-a2).

- In Minnesota, a second offense of drug smuggling or a third offense of drug possession can result in the indefinite loss of all visitation. Minn. Dept. of Corrections Directive 302.100B (11/01) (App. pp. g2-g3).

- A third disciplinary conviction for drug possession in Mississippi can result in a complete loss of visitation for one year if the inmate is transferred to "D-custody," though inmates are still permitted to have visits with their attorneys. Miss. Dept. of Corrections S.O.P. 18-02-01 (6/1/02) & S.O.P. 31.03.01 (4/1/99) (App. pp. h1-h2).

- For first and second offenses, New York authorizes a one-year suspension of contact visitation for inmates who attempt to receive narcotics or other dangerous drugs during a visit. N.Y. Comp. Codes R. & Regs. tit. 7, § 200.5(f) (4/1/02) (App. pp. j1-j3). A third offense results in outright revocation of visitation. *Id.* [2]

- In Ohio, a second positive drug test subjects an inmate to up to six months loss of visitation, and any

[2] Although not explicitly stated in the New York regulation, the outright revocation of visitation appears to pertain to contact visits. The rule is to allow non-contact visitation when contact visitation is suspended, but non-contact visitation can be withheld after the consideration of relevant factors, including whether noncontact visits will further the rehabilitation of the inmate. N.Y. Comp. Codes R. & Regs. tit. 7, § 200.5(a)(4) (4/1/02) (App. p. j1).

subsequent offenses are subject to more progressive discipline. Ohio Dept. of Rehabilitation and Correction §§ 308, No. 4, Pt. VI(K)(2) (7/10/02) & 312, No. 02, Pt. VI(L) (2/2/01) (App. pp. l1-l2, l4).

- Third and subsequent drug offenses in Rhode Island may result in a one-year suspension of visitation. R.I. Admin. Code 06.070.004 Pt. III(E)(13) (7/12/99) (App. pp. m1-m2).[3]

- Under South Carolina's "zero tolerance" policy, inmates with five or more disciplinary convictions for drug possession lose visitation privileges for two years. S.C. Dept. of Corrections OP-22.14, Appendix B (3/30/02) (App. pp. n4-n5).[4]

- For second and subsequent offenses of drug possession, Tennessee requires that visits (excluding attorney and minister visits) be suspended for one year. Tenn. Dept. of Correction Reg. 507.01(VI)(F)(7) (10/1/01) (App. pp. o2-o3).[5]

[3] Attorneys and their agents are not covered by the policy. R.I. Admin. Code 06.070.004 Pt. III(G)(4) (7/12/99) (App. p. m2).

[4] South Carolina inmates may also lose all visitation for a two-year period if they are found to possess drugs while entering, exiting, or in the visiting room. S.C. Dept. of Corrections OP-22.09 (10/30/98) (App. pp. n2-n3).

[5] Wardens in Tennessee also may suspend visits up to six months for any reason. Tenn. Dept. of Correction Reg. 507.01(VI)(F)(4) (10/1/01) (App. pp. o1-o2). Non-contact visitation is simply an alternative to the suspension of

Although the specific terms of each state's policy may be different from the MDOC policy, these policies are fundamentally the same because they represent the attempts of different states to combat the intractable problem of drugs in prisons by utilizing visitation as an incentive for good behavior.

In other states, discipline is not necessarily multi-tiered, and visitation may be maximally suspended after a single drug-related infraction.[6]

- Florida allows up to a two-year suspension of visitation for drug violations, and non-contact visitation is discretionary under these circumstances. Fla. Admin. Code Rules 33-601.731(3) (5/27/02), 33-601.731(8) (5/27/02) & 33-601.735 (11/18/01) (App. pp. c1-c4).

- In Iowa, drug possession is a Class B offense for which visiting privileges may be suspended up to one year. Ia. Dept. of Corrections Policy No. IN-V-36(V)(L) & (N)(20) (12/00) (App. pp. e2-e3).

- Maryland authorizes a 180-day suspension of visitation for prison disciplinary convictions. Md. Div. of Correction DCD 105-4 Appendix 3 (App. pp. f1).

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visitation and is not required. Tenn. Dept. of Correction Reg. 507.01.1(VI)(A)(1) (7/1/02) (App. p. o3).

[6] In federal prisons, a violation of federal visiting guidelines may also result in the suspension of visitation "over an extended period of time." 28 C.F.R. § 540.52 (App. p. p1).

- New Hampshire inmates who commit drug offenses lose family visits for 30 days and all other visits for one year. N.H. Dept. of Corrections PPD 7.9 (IV)(P) (7/1/02) (App. pp. i1-i2). Additionally, New Hampshire inmates in disciplinary segregation are not allowed any visitors at all. N.H. Dept. of Corrections PPD 7.9 (IV)(D) (7/1/02) (App. p. i1).

- A loss of up to six months of visitation is authorized for drug possession in North Carolina. N.C. Inmate Disciplinary Procedures Ch. B, §§ .0202 & .0204 (3/28/02) (App. pp. k1-k2).

Visitation can also serve as the proverbial carrot on a correctional stick, as demonstrated by South Carolina's visitation policy for long-term inmates. An inmate serving a sentence at least 20 years in length who has served at least five years of his or her sentence will receive extra visitation privileges if the inmate has had no disciplinary infractions for a one-year period. S.C. Dept. of Corrections OP-22.09 (10/30/98) (App. p. n2). These extra privileges may be revoked by the warden if the inmate commits a new disciplinary offense. *Id.* By rewarding positive inmate behavior, a prison's rehabilitative goals are more likely to be met.

C. The suspension of non-contact visitation as a punishment for inmate misconduct is a reasonable prison practice, as confirmed by review of the four "*Turner* factors"

The Court in *Turner* pointed to several considerations that bear on the reasonableness inquiry. First, for the prison practice to be upheld, there must be a valid and rational connection between the practice and the proffered legitimate

and neutral penological interest. 482 U.S. at 89-90. Second, courts should consider whether inmates have alternative means of exercising their asserted right. *Id.* at 90. Third, courts should evaluate "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally." *Id.* Finally, courts should consider whether "easy alternatives" exist, which would show that the response of prison officials is an "exaggerated" one. *Id.*

In assessing these "*Turner* factors," courts must bear in mind that they are not relieved of their obligation to remain deferential to the informed judgment of prison officials. *See id.; see also O'Lone*, 482 U.S. at 350. The ultimate question remains whether the regulation is reasonable; the *Turner* factors "are relevant to, and . . . serve to channel, the reasonableness inquiry." *See Thornburgh*, 490 U.S. at 414.

1. **The First *Turner* Factor.** There can be no question that Michigan possesses a legitimate penological objective in enforcing its regulation. Time and again, this Court has recognized that the rehabilitation of inmates is a "paramount objective of the corrections system." *Pell v. Procunier*, 417 U.S. 817, 823 (1974); *Martinez*, 416 U.S. at 413. Another legitimate penological goal is the maintenance of internal security. *Pell*, 417 U.S. at 823; *Thornburgh*, 490 U.S. at 415; *Hudson v. Palmer*, 468 U.S. 517, 524 (1984); *Martinez*, 416 U.S. at 412-13. In meeting its legitimate penological objectives, "the Government must be able to take steps to maintain security and order at the institution and make certain no weapons or illicit drugs reach [inmates]." *Bell*, 441 U.S. at 540.

The Sixth Circuit nevertheless concluded that MDOC failed to show that the regulation is rationally related to

achieving those concedely legitimate objectives.[7] According to the court, at trial MDOC "produced only anecdotal evidence to show that the permanent ban on visitors has deterred drug abuse in the prison population." (Pet. App. 20a). It offered no further analysis under the first *Turner* factor. The Sixth Circuit's reasoning and conclusion were flawed.

Prison regulations which allow for the suspension or termination of non-contact visitation for inmates who have violated prison rules by possessing contraband are rationally related to serving the aforementioned objectives. The Court may take judicial notice of the fact that contraband in prisons is a serious problem and that illicit items necessarily enter correctional facilities from the outside. *Hudson*, 468 U.S. at 526-27; *see also Block*, 468 U.S. at 586, 588-89 (contact visits "open the institution to the introduction of drugs, weapons, and other contraband.").[8] Even non-contact visits can afford inmates an opportunity to receive contraband. (Pet. App. 61a-62a) (non-contact visitation sometimes takes place in portable booths located in the contact visitation room).[9] In some instances, the termination of non-contact visits can effectively curb the influx of drugs into prisons.

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[7] The Sixth Circuit agreed that "[d]eterring prisoner drug abuse is a legitimate penological goal." (Pet. App. 20a).

[8] Notably, even the trial court apparently believed that drugs are not a significant problem for MDOC, characterizing the use of marijuana and other drugs by inmates as "minor" and finding that there was "little hard data" to show the existence of a problem. (Pet. App. 40a, 78a-79a, 89a, 116a).

[9] The problem of drugs in prisons is underscored by the fact that approximately 21% of state inmates are incarcerated for drug offenses. (*See* App. p. q12, U.S. Dept. of Justice, *Prisoners in 2001*, NCJ 195189, 12 (July 2002)).

Moreover, even in those prisons where it is virtually impossible for inmates to receive contraband materials during a non-contact visit, the termination of non-contact visitation has deterrent value. In light of the serious security concerns presented by drugs in prison, correctional officials must be allowed to take measures they deem necessary to combat this seemingly insurmountable problem.

Testimony presented at trial by MDOC officials demonstrates that there was a rational relationship between the MDOC policy and drug problems confronted by its facilities. Kenneth McGinnis, a former MDOC Director, testified that he had a "desire for a zero tolerance policy to get at the problem of drug abuse within the system, which he considered to be ongoing and complex." (Pet. App. 29a-30a). He identified violence as the most predominant problem incident to the presence of drugs in prison. (Pet. App. 72a-73a). Pat Caruso, an MDOC administrator, "testified that the permanent visitation ban was a powerful management tool, particularly because level 5 and 6 prisoners are already restricted to non-contact visits." (Pet. App. 30a). Warden Kurt Jones testified that the permanent ban on visits for drug offenses "has helped reduce substance abuse misconduct." (Pet. App. 30a). Warden Sally Langley "also testified in support of the permanent visitation restriction as an effective management tool." (Pet. App. 30a). Similar testimony was offered by Marjorie VanOchten, another MDOC employee. (Pet. App. 73a). Security and discipline were also cited by MDOC officials as reasons for the restriction. (Pet. App. 73a).

Even if the trial court and Sixth Circuit disagreed with the testimony presented by these MDOC officials, these expert opinions were entitled to deference. *See Turner*, 482 U.S. at 92-93. The opinions of these MDOC officials, which mirror identified objectives of visitation restrictions imposed in other states, could not be set aside simply because a court disagreed

with them. *Bell*, 441 U.S. at 554; *see also Jones*, 433 U.S. at 128. Once the trial court concluded that there were factors favoring the ban on non-contact visits, its inquiry should have ended. *Block*, 468 U.S. at 589.

Of course, not all inmates will be deterred from misconduct by regulations which can result in the termination of visitation.[10] Nevertheless, the rational relationship between the objective of reducing drug use and a practice of suspending non-contact visitation for inmates who have used drugs in prison cannot seriously be denied.

2. The Second *Turner* Factor. Any limited right of association retained by inmates "must be viewed sensibly and expansively." *Thornburgh*, 490 U.S. at 417.

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[10] During the past three years, more than 125 inmates in Colorado lost visitation privileges after being convicted of drug-related disciplinary violations three or more times while incarcerated. (Affidavit of Lou Archuleta, ¶ 5, App. p. r1). More than 160 additional Colorado inmates lost visitation privileges after one or two drug-related disciplinary infractions. (Archuleta Aff., ¶ 5, App. p. r1). The loss of visitation privileges nevertheless does not deter all inmates from going to great lengths to obtain drugs while incarcerated. Colorado inmate Guadalupe Robledo was convicted of two drug-related disciplinary offenses and subjected to the visitation prohibitions set forth by the Colorado regulation. (Archuleta Aff., ¶ 6, App. p. r2). While challenging his disciplinary convictions in a Colorado district court, his claims became moot when he died of a heroin overdose in his cell. (Complaint in *Robledo v. Neet*, 00CV313 (Fremont County District Court) App. pp. s1-s3); Death Certificate, App. p. r5). His family then filed a notice of intent to sue because correctional officials "allowed" drugs to come into the prison. (Notice, App. pp. t2-t4).

Even when non-contact visitation is terminated, inmates possess alternative means of associating with individuals who might otherwise have visited them in prison, because they may send letters and make collect telephone calls.

Relying on the findings made by the trial court, the Sixth Circuit found that letter-writing was not an available alternative because several of the inmates subject to visitation restrictions were functionally illiterate.[11] (Pet. App. 14a). For the reasons stated below, the Sixth Circuit improperly applied the second *Turner* factor.

An inquiry focusing on the availability of the alternative means of exercising the constitutional right should not rest on the specific limitations unique to each inmate. For this reason, although there have always been illiterate inmates, that fact did not prevent this Court from concluding in a previous decision that communication by mail can serve as an available alternative when other channels of communication are removed. *See Pell*, 417 U.S. at 824. Rather, the Court noted that there appeared to be nothing to prevent illiterate inmates from enlisting assistance in drafting correspondence. *Id.* at 827 n.5; *see also Casey*,

[11] The trial court concluded that letters and phone calls were inadequate for the reasons proffered by the inmates' expert, Dr. Terry Kupers. (Pet. App. 32a-33a). Specifically, Dr. Kupers found that letters were not adequate because "60 or 80 percent" of inmates "cannot compose a decent letter." (Pet. App. 32a). Dr. Kupers also was concerned because letters may be read by correctional officials. (Pet. App. 33a). Dr. Kupers found that phone calls are inadequate because they are costly and contain disruptive messages every few minutes reminding the parties to the phone call that the call originated from a prison. (Pet. App. 33a).

518 U.S. at 360 (no evidence that illiterate prisoners could not obtain minimal help to access the courts).

The Sixth Circuit overlooked the fact that even "functionally illiterate" inmates can write expressive letters. According to a study conducted by the National Center for Education Statistics at the United States Department of Education:

> Many past studies of adult literacy have tried to count the number of "illiterates" in this nation, thereby treating literacy as a condition that individuals either do or do not have. We believe that such efforts are inherently arbitrary and misleading. They are also damaging in that they fail to acknowledge both the complexity of the literacy problem and the range of solutions needed to address it.

U.S. Dept. of Education, *Literacy Behind Prison Walls*, NCES 1994-102, xvii (Oct. 1994) (App. p. u4).[12] As the result of efforts by the federally-funded National Adult Literacy Survey, the following definition of "literacy" was adopted by an expert panel: "Using printed and written information to function in society, to achieve one's goals, and

[12] Pertinent excerpts from this statistical report are included in the appendix. (App. pp. u1-u20). The entire report can be obtained without charge on the internet at: http://nces.ed.gov/pubs94/94102.pdf.

to develop one's knowledge and potential." (App. pp. u6-u7). The study introduced three scales for measuring literacy skills: prose, document, and quantitative literacy. (App. p. u8). For purposes of this brief, the pertinent scale is the prose literacy scale, because it assesses reading comprehension and writing ability. (App. p. u8). Inmates who are "functionally illiterate" in some tasks can nevertheless possess a broad range of reading and writing skills.

The results of this federal study were based upon data obtained from more than 1,100 inmates housed in 80 federal and state prisons. (App. p. u4). Some highlights of the study are:

> (1) 89% of inmates reported reading a book within the previous six months;
>
> (2) 69% of inmates perform at Level 2 or better on the prose literacy scale;[13]
>
> (3) 75% of inmates read letters at least once a week;
>
> (4) 78% of inmates write letters at least once per week;
>
> (5) 80% of inmates need no help in composing letters;

[13] "Prisoners at [Level 2] on the prose scale can generally make low-level inferences based on what they read and integrate two or more pieces of information." (App. p. u12). Even the 31% of prisoners performing at Level 1 on the prose scale may be able to read short pieces of text. (App. p. u12).

> (6) 14% of inmates need at least a little help composing letters;
>
> (7) 7% of inmates need a lot of help composing letters.

(App. pp. u4, u5, u12, u16, u17, u18, u19, u20). It thus appears that as of 1994, most prisoners were literate enough to draft and send correspondence to their family and friends without any assistance.

The Sixth Circuit also belittled the value of telephone calls, finding them unsatisfactory because they are "terminated after a few minutes." (Pet. App. 14a). The court did not suggest that illiterate inmates were unable to use the phones in order to maintain family contact.

The Sixth Circuit's application of the second *Turner* factor is suspect for one final reason. Not all inmates are illiterate, and the Sixth Circuit did not find that all of the plaintiff class members were illiterate and unable to exercise the alternative means of communicating with intimate associations. Although this action was pursued as a class action, certainly the Sixth Circuit could not have held that there were no easy alternatives for the literate inmates.[14]

[14] This calls into question whether the action should have been certified as a class action under Fed. R. Civ. P. 23. *See Casey*, 518 U.S. at 357-60 (1996) (finding that systemwide relief was improper and that the scope of a remedial order must be limited to those members of the class who have sustained an actual injury). In a similar vein, the circuit court later relied upon a few anecdotes of circumstances where it believed the MDOC regulation was arbitrarily applied and then extended those fringe cases to the class. (Pet. App. 19a-20a). The arbitrary application of a

3. **The Third *Turner* Factor.** The third *Turner* factor -- as to which the Sixth Circuit provided no analysis whatsoever -- requires consideration of the impact of any court-ordered remedy on guards, inmates, and prison resources. This factor clearly favors MDOC. Testimony from an MDOC warden showed that serious security concerns are presented "when drugs get inside a facility, that creates a whole culture, a whole issue where individuals can get hurt, staff or prisoners." (Pet. App. 135a). By failing to defer to the judgment of MDOC officials, the Sixth Circuit has perpetuated the environment which correctional officials, in their sound and seasoned experience, have found unacceptably dangerous for inmates and staff.

4. **The Fourth *Turner* Factor.** The fourth *Turner* factor is not a "least restrictive alternative" factor. *See Turner*, 482 U.S. at 90-91. Prison officials are not required to test every possible alternative means of addressing a correctional problem before finally settling on a solution. *Id.*; *see also O'Lone*, 482 U.S. at 350. As long as their fears are "reasonably founded," prison officials may permissibly reject less restrictive solutions. *Thornburgh*, 490 U.S. at 419. On the other hand, if the costs of any less restrictive alternative would be *de minimis*, a court may consider that evidence that the prison practice is not reasonable. *Id.* at 418.

The Sixth Circuit found that the fourth *Turner* factor was not met because "prison officials have at their disposal many other constitutional means of punishing prisoners for violating drug rules." (Pet. App. 20a). This was the complete extent of the Sixth Circuit's analysis of this factor. A proper analysis of the fourth factor leads to the opposite conclusion.

---

regulation to a few inmates does not render the regulation *facially* invalid.

The MDOC regulation does not constitute an exaggerated response to the "perplexing problems" presented by the introduction of illicit substances into prison. *See Hudson*, 468 U.S. at 526-27. The MDOC regulation, like regulations promulgated by numerous other states, imposes progressive discipline for continuing substance abuse violations. Non-contact visitation is not suspended after a single violation, and inmates are on notice that their continual failure to follow prison rules will result in progressively more severe discipline. When an inmate knowingly violates the prohibitions against illicit substances, the inmate knows that the consequences of his or her conduct are the result of the inmate's choice.

In some instances, the suspension of non-contact visitation will effectively cease the introduction of contraband to a particular inmate. In other instances, the suspension will simply reinforce to the inmate that his or her self-destructive behavior will not be tolerated, hopefully forcing a change in the inmate's behavior and furthering the inmate's rehabilitation. Either result is acceptable under the fourth *Turner* factor, because the regulation is reasonably expected to avoid "greater harm." *See Thornburgh*, 490 U.S. at 419.

Ultimately, the choice lies with the inmate to avoid this "greater harm." It is important to remember that the loss of non-contact visitation is brought about by an inmate's voluntary conduct. Inmates can prevent the loss of non-contact visitation by refraining from misconduct while incarcerated.

CONCLUSION

The judgment of the Sixth Circuit should be reversed.

Respectfully submitted.

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Dated: January, 2003

APPENDIX A

California Administrative Code
Title 15
Sections 3315(f)(5)(H) & (I) & 3323(c)(7) & (d)(6)

***

§ 3315(f)(5)

(H) For a violation of subsection 3323(c)(7), there shall be a loss of visits for one year to be followed by non-contact visits for two years.

(I) Loss of visits to be followed by non-contact visits for violations of subsection 3323(d)(6) shall be as follows:

1. Loss of visits for 90 days, to be followed by non-contact visits for 90 days for the first offense.

2. Loss of visits for 90 days, to be followed by non-contact visits for 180 days for the second offense.

3. Loss of visits for 180 days, to be followed by non-contact visits for 180 days for the third offense.

***

§ 3323

(c) Division "A-2" offenses; credit forfeiture of 151-180 days. . . .

(7) Distribution of any controlled substance in an institution/facility or contract health facility. . . .

(d) Division "B" Offenses; credit forfeiture of 121-150 days. . . .

(6) Unauthorized possession or control of any controlled substance, including marijuana, or controlled medication in an institution/facility or contract health facility. . . .

APPENDIX B

Colorado Department of Corrections
Administrative Regulation 300-01.IV.L.10

***

10. Possession and/or use of illegal drugs constitutes a serious threat to the security of all correctional facilities or offices, requiring that all efforts be employed to preclude entry and/or use of illegal drugs within a correctional facility or DOC office. Accordingly, upon verified possession or use of illegal drugs or participation in drug-related activities, to include refusals of drug screening procedures, forfeiture of the offender's social visiting privileges shall, at a minimum, be imposed as follows:

a. First conviction: Six (6) months suspension followed by three (3) months non-contact visiting, if available.

b. Second conviction: Twelve (12) months suspension followed by six (6) months of non-contact visiting.

c. Third conviction: Three (3) year suspension, after which an offender can reapply for visiting privileges.

d. Forfeiture of social visiting privileges under these conditions will be ordered by the Administrative Head.

e. Verified possession will be by accepted testing procedures such as Narkit field testing and/or urinalysis screening.

APPENDIX C

Florida Administrative Code
Sections 33-601.731(1)-(5), (8), & 33-601.735

***

33-601.731 Revocation or Suspension of Visiting Privileges

(1) Suspension of an inmate's visiting privileges shall be considered by the ICT as a management tool independent of any disciplinary action taken pursuant to Rules 33-601.301 through 33-601.314, F.A.C.

(2) Indefinite suspension of an inmate's visiting privileges as a management tool by the ICT is available as a management tool by the ICT when an inmate is found guilty of the following ~~offenses~~: . . .

(b) Criminal activity, serious rule violations, repeated visiting rule or procedure infractions or security [breach]. A serious rule violation is a violation that subjects the violator to suspension of privileges for a minimum of two years or to revocation of visiting privileges.

(3) Suspension of an inmate's visiting privileges as a management tool by the ICT for the following disciplinary offenses are authorized up to two-years when inmate is found guilty of: . . .

(b) Possessing drugs or money. . . .

(4) Suspension of an inmate's visiting privileges as a

management tool by the ICT for the following disciplinary offenses are limited to three months for a first offense, six months for a second offense and two years for a third or subsequent offense when an inmate is found guilty of possession of any of the following contraband or illegal items:

(a) Intoxicating beverages, . . .

(5) Suspension of an inmate's visiting privileges shall be considered by the ICT as a management tool when an inmate is rated "unsatisfactory" for the work or program performance rating, including part-time assignment or security assessment and shall be considered for suspension of visits privileges for three months beginning with the month the rating was entered and running consecutively for each unsatisfactory rating . . .

(8) In lieu of suspending an inmate's visiting privileges, the ICT shall be authorized to consider placement of an inmate in non-contact visitation status as provided in Rule 33-601.735(2)(c), F.A.C., for offenses listed in Rule 33-601.731(1) through (6), F.A.C. . . .

***

33-601.735 Non-contact Visiting

(1) When the ICT determines that non-contact visiting is necessary in order to maintain the security and good order of the institution, the ICT shall make a recommendation to the warden who shall approve or disapprove the recommendation.

(2) The ICT shall consider the following factors in determining whether to place an inmate in non-contact status:

(a) Whether the inmate is a threat to the security of the institution,

(b) The inmate's and his or her visitors' past behavior during visiting,

(c) The inmate's disciplinary history within the last five years involving drugs, contraband, violence, or visiting policy violations occurring during visiting,

(d) Evidence or criminal intelligence reports that an inmate has possessed, sold, or transferred drugs or alcohol,

(e) Whether the inmate has a confirmed membership in a security threat group, and

(f) A positive drug or alcohol urine test.

(3) The ICT shall review non-contact visiting status a minimum of every 6 months to evaluate whether changes are necessary based upon the following:

(a) The seriousness of the incident or circumstances resulting in placement in non-contact status,

(b) The inmate's history of repeated placement on non-contact status,

(c) The inmate's overall adjustment history since placement in non-contact status, and

(d) The inmate's disciplinary pattern within the last year related to drugs, contraband involvement, violence, or visiting rule violations.

(4) The warden shall ensure that there is sufficient space for non-contact visiting based on space available and allowable visitors.

(a) Non-contact visits shall be scheduled for one two-hour visit per week unless an emergency exists or security concerns dictate otherwise.

(b) Non-contact visits shall be limited to a maximum of four adult visitors and as many children as can be accommodated at a time.

(c) More than four visitors can be allowed to visit on a given day, but visiting will be on a rotating basis during the two-hour period.

(d) Inmates are responsible for notifying visitors of their placement on non-contact visiting status.

APPENDIX D

Georgia Administrative Code
Section 125-3-4-.01

***

Visiting is an inmate privilege not a right. As such, some or all of an inmate's visiting privileges may be suspended or revoked as a disciplinary measure; because the rules governing visiting are violated; or when the security of the institution so requires. The Warden may modify or limit the visiting privileges if it appears that the institution cannot accommodate the quantity of visitors entering the institution.

APPENDIX E

Iowa Department of Corrections
Division of Institutions
Policy and Standards
Policy Numbers IN-V-122(VI) and IN-V-36(I) & (V)

***

IN-V-122(VI) Termination of Visits

Visiting privileges may be denied, modified, or terminated due to:

A. Personal behavior of the offender or visitor that is presenting a threat to security and order.

B. The visitor and offender directly exchange any unauthorized object or article. Purchases from the visiting room vending machines/canteen during the visit are authorized.

C. An authorized electronic detection device indicating the presence of drugs or other contraband or when before, during, or after the visit the apparent odor or effect of alcohol or narcotic drugs is detected.

D. Visits may be denied or terminated when the visit or future visiting is detrimental to the health and welfare of the offender or visitor.

E. Any behavior on the part of an offender or a visitor which is or may be disruptive to order and control or which violates institutional rules.

F. Visitors who fail to supervise their children when they interfere or disrupt other visits.

G. Offenders may request reconsideration of denied visitors following demonstrated resolution of the reasons for denial or when approved by the Warden/Superintendent or Regional Deputy Director.

***

IN-V-36

I. Policy

The Department of Corrections is required by Iowa statute to maintain order and discipline within the institutions. This policy establishes the behavioral guidelines for acceptable offender behavior and a fair and reasonable process for achieving acceptable offender behavior. . . .

V. Disciplinary Procedures for Major Offenses . . .

L. Authorized Sanctions:

Upon a finding of guilty by the Administrative Law Judge, the Administrative Law Judge shall specify the class of the violation taking into consideration any aggravating or mitigating circumstances. Any or all of the following sanctions listed for a given class may be imposed at the discretion of the Administrative Law Judge: . . .

2. Class B . . .

c) Loss or modification of

any or all privileges including, but not limited to, canteen privileges (not including personal hygiene items), visiting privileges, allowance for work performed, access to jobs and programs, not to exceed one year. . . .

N. Definition of Offenses . . .

20. Possession of Drugs, Intoxicants: . . .

Class "B" for all violations.

APPENDIX F

Maryland Division of Correction
Appendix 3 to DCD 105-4

***

Alternative Disciplinary and Informal Sanctions

The following sanctions may be imposed as sanctions for informal dispositions or after a formal disciplinary hearing independently, in conjunction with other alternative sanctions, or in addition to the revocation of good conduct and/or special program credits and/or segregation time determined by the sentencing matrix.

1. Reprimand.

2. Sanitation Assignment for a specific period not to exceed 15 days as an informal sanction or 30 days as an alternative sanction.

3. Restitution.

4. Suspension of any of the following privileges: . . .

   c. Visiting privileges, except legal and clergy, for a specific period not less than 15 days nor more than 60 days as an informal sanction or not less than 60 days but not more than 180 days as an alternative sanction.

d. Any other specified institutional privilege for a specific period not to exceed 45 days as an informal sanction or 90 days as an alternative sanction. . . .

APPENDIX G

Minnesota Department of Corrections
Directives 302.100 & 302.100B

***

Directive 302.100

PURPOSE: To provide the opportunity for offenders to receive visits from carefully screened family and friends while incarcerated.

APPLICABILITY: All employees of, persons in the custody of and the visitors of adult facilities.

DIRECTIVE:

A. Each facility will provide visiting privileges to incarcerated offenders in an effort to maintain family and community relationships. All facilities reserve the right to refuse visiting privileges for security reasons.

B. Violation of this directive by offenders will result in disciplinary action, visiting restrictions and/or criminal charges.

C. Violation of this directive by visitors may result in visiting restrictions and/or criminal prosecution. . . .

***

JMcGill, 2.3, 12.8, 14

Rule Violation	First Offense	Second Offense	Third Offense
1. Physical assault or attempted assault of staff, offenders, or visitors in the visiting area.		Indefinite non-contact to loss of visiting privileges	
2. Smuggling, or attempting to smuggle (drugs -- including tobacco -- weapons, escape materials, or other threatening items in or out of the facility). Conviction in discipline for a smuggling offense required.	5 years non-contact**	Indefinite non-contact to loss of visiting privileges **	Indefinite non-contact to loss of visiting privileges **
3. Smuggling or attempting to smuggle contraband other than the above in or out of the facility.	6 months non-contact	3 years non-contact**	Loss of visiting privileges**
4. Verbal abuse or threats to staff and others in the visiting area.	6 months non-contact	1 year non-contact**	Indefinite non-contact or loss of visiting privileges**
5. Positive UA, refusing a UA, or altering or attempting to alter a UA.	9 months non-contact	18 months non-contact**	Indefinite non-contact or loss of visiting privileges**
6. Possession of mood altering chemicals or paraphernalia (including tobacco, drugs, etc.) anywhere in the facility.	9 months non-contact	18 months non-contact**	Indefinite non-contact or loss of visiting privileges**
7. Inappropriate sexual behavior and/or physical contact in the visiting area.	Termination of visit and 3 months non-contact	6 months non-contact	Indefinite non-contact or loss of visiting privileges**
8. Masturbation, mutual masturbation, oral sex or sexual intercourse in the visiting area.	1 year non-contact	Permanent non-contact or loss of visiting privileges	Permanent non-contact or loss of visiting privileges
9. Interfering with searches (unclothed body search or pat search) in the visiting area.	6 months non-contact	1 year non-contact**	Indefinite non-contact or loss of visiting privileges**
10. Visiting room rule violations involving offenders, visitors and/or children.	Termination of visit.	3 months non-contact	6 months non-contact
11. Disobeying a direct order in the visiting area.	6 months non-contact	1 year non-contact**	Indefinite non-contact or loss of visiting privileges**
12. Unauthorized verbal or nonverbal communication through the perimeter or other barriers.	6 months non-contact	1 year non-contact**	1 year to indefinite non-contact**

** All sanctions 1 year in duration and longer will be annually reviewed by the facility Visiting Committee at the request of the offender.

2

APPENDIX H

Mississippi Department of Corrections
Disciplinary Procedures
S.O.P. 18-02-01 & S.O.P. 31.03.01

***

S.O.P. 18-02-01

Disposition and Penalties:

The Disciplinary Hearing Officer will consider the seriousness of each incident/violation, to include those incidents/violations listed on the Intensive Supervision Program and Earned Release Certificate and the mental status of each offender when assessing punishment.

Time frame for 1st, 2nd, and 3rd RVR's for the same violation is three (3) months. Custody levels should be considered as D, C, MORB, MOB, MORA and MOA.

Disposition/Penalties, which may be imposed by a Hearing Officer for a rule violation, are as follows: . . .

Rule #9: Unauthorized possession, introduction, or use of contraband as described in Paragraph 2, including, but not limited to, the following: Firearm, Sharpened Instrument or Knife, other Weapon, any Tool, any Explosive or Ammunition, any Intoxicant, Medication, Drugs or Drug Paraphernalia, or any other Property not included on the allowable items list. . . .

DRUGS - Offenders in Institutions, Private Prisons & County Regional Facilities

1st RVR:
Reduced to D-custody for 3 months

2nd RVR:
Reduced to D-custody for 6 months

3rd RVR:
Reduced to D-custody for 1 year . . .

***

S.O.P. 31.03.01

Procedure: . . .

Maximum Security ("D" Custody) - Except for attorney visits, offenders in "D" custody will receive no visitors. . . .

APPENDIX I

New Hampshire Department of Corrections
Policy and Procedure Directive
Chapter: Resident Programming
Statement Number 7.9

***

III. POLICY:

Visiting is a privilege. It is the policy of the New Hampshire Department of Corrections to provide time and facilities for inmate visitations in order to support and maintain relationships between inmates and significant people in their lives, and to be no more restrictive toward visitors than necessary for the security of the visitation, the welfare of the prisoners and staff and to exclude contraband.

IV. PROCEDURE: . . .

D. Disciplinary Segregation
Disciplinary segregation is a period of time when all privileges are restricted because of a specific infraction of the rules. Inmates in disciplinary segregation are not allowed visitors at all. The Inmate Manual makes it the responsibility of the inmates to notify prospective visitors when they are in disciplinary segregation. . . .

P. Drug-Free Environment
The New Hampshire Department of Corrections promotes a drug-free environment. A drug free environment is essential to recovery and to a safe

institution for inmates to live in and staff to work in.

Any inmate to be found in possession of drugs, have a positive urine test for drugs or refuse to submit to a urine test and who have been found guilty at a disciplinary hearing, will have immediate family visits suspended for thirty (30) days and all others suspended for one year. At the end of the one year suspension, they will be allowed non-contact visits. If it can be proven that a specific visitor brought drugs into the prison, that visitor may be barred in accordance with COR 306.04 and prosecuted in accordance with RSA 622:24. . . .

APPENDIX J

Official Compilation of Codes, Rules and Regulations of the State of New York
Title 7
Chapter IV
Part 200
Section 200.5 Termination, suspension and revocation.

***

(a) General. Pursuant to the procedures set forth in this section, a superintendent may deny, limit, suspend or revoke the visitation privileges of any inmate or visitor to visit each other if the superintendent has reasonable cause to believe that such action is necessary to maintain the safety, security, and good order of the facility. . . .

(4) Noncontact visiting will be permitted during the suspension of contact visitation rights in the area of the facility designated for that purpose.

Note: When considering whether or not the noncontact visiting privileges of a visitor will be withheld, the superintendent must consider the following criteria: length of inmate's unserved sentence, visitor's relationship to inmate, whether the violation appeared to be intentional or unintentional, whether allowing noncontact visiting would have a rehabilitative effect on the inmate, and whether there is a past history of visiting rule violations involving the same visitor or inmate. . . .

(f) The following are intended as the penalties for visit-related misconduct. In addition, a cumulative penalty consisting of up to an additional six months suspension of

all visiting privileges may be imposed on an inmate and visitor if they have been involved in two or more unrelated types of misconduct with each other within a one-year period. The one-year period shall run backward from the date of the most recent pending misconduct(s). However, the additional penalty imposed by virtue of cumulating a number of different misconducts shall in no event exceed the total penalty permitted for the equivalent number of repetitions of the least serious misconduct.1

Type of Misconduct	Occurrence	1st Offense	2nd Offense	3rd Offense
Visitor or inmate becomes apparently under influence of alcohol or drugs during visit	Immediate termination of visit and	Up to 1 mo. suspension of visitation rights	Up to 3 mos. suspension of visitation rights	Up to 1 yr. suspension of visitation
Attempt to introduce contraband (a) money . . . (d) marijuana (1) 25 grams or less (Intent unlikely)	Visit denied or immediately terminated and	Up to 6 mos. suspension of contact visitation rights	Up to 1 yr. suspension of contact visitation rights	Up to 1 yr. suspension of visitation rights
(2) 25 grams or less (Intent likely) (3) More than 25 grams	Visit denied or immediately terminated and	Up to 1 yr. suspension of contact visitation rights	Up to 1 yr. suspension of visitation rights	Revocation of visitation rights
(e) Narcotic and other dangerous drugs (1) Intent unlikely	Visit denied or immediately terminated and	Up to 1 yr. suspension of contact visitation rights	Up to 1 yr. suspension of visitation rights	Revocation of visitation rights
(2) Intent likely	Visit denied or immediately terminated and	Revocation of visitation rights		

1 The following chart omits several offenses, many of which pertain solely to visitor misconduct and not any misconduct on the part of the inmate.

APPENDIX K

State of North Carolina
Department of Correction
Division of Prisons
Policy & Procedures
Chapter: B
Section: .0200
Title: Inmate Disciplinary Procedures

***

§ .0202 Disciplinary Offenses

Disciplinary offenses are divided into four (4) classes which are Class A through Class D. Class A offenses are the most serious and Class D offenses are the least serious.

(a) The following are the Class A disciplinary offenses: . . .

(A12) Manufacture, possess, introduce, sell or use any unauthorized controlled substance, unauthorized intoxicant or alcoholic beverage, or possess associated paraphernalia;

(A13) Refuse to submit to a drug test or breathalyzer test, or interfere with the taking of such tests; . . .

***

§ .0204 Authorized Disciplinary Punishments

Presumptive punishments are established for the four (4) classes of offenses. Unless the punishment is decreased or suspended by the Hearing Officer per .0204(e)(4) and (5), or decreased or suspended by the facility head or designee per .0204(e)(6) and (f)(2), all the presumptive punishments listed for each class may be awarded for conviction of a disciplinary offense within the given class. The facility head/designee may void any disciplinary punishment. In those cases where the facility head/designee voids a disciplinary punishment, designated staff shall forward a memorandum documenting this action to the Chief Disciplinary Hearing Officer who shall ensure that it is documented in the inmate's appropriate electronic file. The presumptive punishments are as follows:

(a) For a Class A offense, the following presumptive punishments are authorized: . . .

(5) Loss of up to three (3) privileges for a period not to exceed six months. These privileges include but are not limited to: work release, home leaves, community volunteer leave, canteen, telephone and visitation. . . .

APPENDIX L

State of Ohio
Department of Rehabilitation and Correction
Sections 308 & 312

***

Section 308

II. PURPOSE:

The purpose of this policy is to deter inmate drug use and trafficking by providing uniform guidelines for inmate drug testing, as well as sanctions and programming for inmates found guilty of Class II Rule 7-Possession or consumption of any intoxicating substance unless with permission. . . .

V. POLICY:

It is the policy of the Department of Rehabilitation and Correction to increase public safety, provide for inmate accountability, institutional control and order by establishing zero tolerance of inmate drug use within institutions. Drug testing shall not be used as a tool for harassment, or to discriminate against an inmate on the basis of race, color, religion, gender, national origin, ancestry or disability.

VI. PROCEDURES: . . .

K. Mandatory Substance Abuse Program (MSAP) . . .

8

2. Sanctions:

The inmate will pay for the first positive drug test (amount to be determined by the cost of the test) and any subsequent tests done while in the MSAP. Further and in addition to disciplinary sanctions or administrative actions identified by administrative rules, the following escalating sanctions will be available to the Rules Infraction Board for any violations of Class II Rule 7-Possession or consumption of an intoxicating substance unless with permission.

a. First Offense - Length of Sanction - Two Months . . .

4. Visit Restrictions (within ACA guidelines) . . .

b. Second Offense - Length of Sanction - Six Months

1. Any or all sanctions provided for the first offense, at the discretion of the managing officer or designee . . .

c. Third Offense - Progressive disciplinary procedures will apply

***

VI. PROCEDURES . . .

K. DENIAL, TERMINATION AND SUSPENSION OF VISITS

Visitors may be excluded when there is reason to believe that their presence would be disruptive to the institution or to the inmate's adjustment. Such exclusions may range from denial of visiting for that day, suspension of visiting privileges for a specific period of time, or permanent removal from the approved visiting list. . . .

Only the Warden or designee can suspend visitation privileges. In addition to the visitor involved in misconduct, the Warden may, at his/her discretion, suspend all of the inmate's approved visitors, except attorneys and clergy unless they are personally involved, for any misconduct involving the inmate and a visitor. Upon determining that visitation shall be suspended, the Warden or designee shall provide a written notice of the time period of suspension to the inmate, all suspended visitors and visitation staff (DRC 2200 and 2199). In addition, the Wardens of all other ODRC institutions shall be notified, either through written or electronic communication, as any suspension from an institution serves as suspension from all facilities. The statement of reasons may be limited to the extent it would jeopardize the security of the institution or the safety of any individual. All suspensions and/or changes in a visitor's status shall be entered into the DOTS Screen (VISTI) within 24 hours of the decision to suspend. . . .

L. VISITING RESTRICTIONS

In all instances where inmates test positive for or are in possession of illegal drugs, or refuse to comply with a request for a drug screen, in addition to appropriate Rules Infraction Board disciplinary actions, the Warden/Designee or designee may modify the inmate's visits according to the following:

1. First Offense - All visits may be suspended for up to two (2) months.

2. Second Subsequent Offense: All visits may be suspended for up to six months. Progressive disciplinary action will apply for subsequent offenses.

3. This section does not affect attorney and clergy visits, unless that person is involved in the drug violation.

APPENDIX M

Code of Rhode Island Rules
Department of Corrections
Inmate Life
Visits

***

§06.070.004

I. PURPOSE:

To establish rules and regulations governing visits at the Adult Correctional Institutions (ACI) of the Rhode Island Department of Corrections (RIDOC) which reflect not only the importance of prison visitation but also the need for security and order. . . .

III. PROCEDURES: . . .

E. Visitor Registration and Search Procedures . . .

13. Drug-Related Offenses by Inmates: An inmate's behavior within the facility may affect his/her visiting status. Any offense that is drug-related may result in an inmate's visiting privileges being suspended for a period of time:

First Offense:	30 days

Second Offense:	6 months
Third and subsequent offenses:	1 year

F. . . .

G. Special Visits

The following categories represent circumstances and procedures for allowing special visits, beyond the normal visiting program as outlined in this policy . . .

4. Professional Visits: Attorneys and their agents (law students, paralegal, legal assistant, investigator, interpreter) visits are not covered by this policy. . . .

APPENDIX N

South Carolina Department of Corrections
Policy/Procedure
OP-22.09 & OP-22.14

***

OP-22.09

PURPOSE: To establish uniform and consistent policy directives and related procedures for the implementation and management of the inmate visitation program.

POLICY STATEMENT: It is the policy of the South Carolina Department of Corrections (SCDC) to enable and encourage inmates, consistent with security and classification requirements, to have the opportunity to visit with family members and friends. Visiting will be conducted in an accommodating manner, in keeping with the need to maintain order and provide for the security and safety of persons and of each institution. Inmate visitation will be conducted in accordance with the provisions of this policy, related Agency procedures, and applicable state and federal statutes, and American Correctional Association Standards. . . .

SPECIFIC PROCEDURES:

1. GENERAL VISITATION PROVISIONS: . . .

d. Inmate visitation with family and friends is considered a privilege and is not considered a guaranteed right. Therefore, the SCDC reserves the right to suspend, restrict, deny, or terminate an

inmate's or visitor's visitation privileges *and/or telephone privileges* due to legitimate concerns regarding the security and safety of the institution . . .

3. FREQUENCY OF GENERAL VISITS FOR INMATES: . . .

f. Long Term Inmates: Long-term inmates whose sentences require the service of 20 years or more before eligibility for parole will be permitted one (1) extra general visit per month after the inmate has served five (5) consecutive years of his/her sentence and has maintained a clear disciplinary record for one (1) year. . . . Should the extra general visit per month be approved, it will remain in effect for the remainder of the long-term inmate's incarceration unless revoked by the Warden for abusing said privilege or for disciplinary infractions. . . .

11. INMATE DISCIPLINARY PROCEDURES APPLICABLE TO VISITATION:

a. Because general visitation is a privilege granted to inmates, such visitation is subject to suspension. Contingent upon the seriousness of the offense, any violation of SCDC rules and regulations that an inmate is party to will result in the inmate being disciplined in accordance with SCDC Procedure OP-22.14(OP), "Inmate Disciplinary Procedures." . . .

c. Those inmates found possessing drugs or money either while in the visiting room or entering or exiting the visiting room during shakedown will be charged with violating Agency rules and regulations and will be processed pursuant to SCDC Procedure OP-22.14(OP), "Inmate Disciplinary Procedures." Inmates found guilty of possessing such contraband in the above circumstances will be automatically suspended from all visiting privileges for a period of two (2) years and will be suspended from telephone privileges with the person(s) they were visiting at the time of the offense provided that the visitor(s) are found to be involved in the commission of the offense. . . .

***

5. MAJOR DISCIPLINARY HEARINGS - PENALTIES: . . .

d. Penalties for Conviction of Disciplinary Offense 1.10, "The Use or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs,"

(1) Inmates who are convicted of disciplinary offense 1.10, "The Use or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs," will be disciplined in accordance with Appendix B "Zero Tolerance of Drug

Use/Possession by SCDC Inmates." The Disciplinary Hearing Officer is authorized to impose only the penalties listed on the matrix for conviction of 1.10 and will adhere strictly to the matrix. There will be no exceptions. . . .

Appendix B

ZERO TOLERANCE OF DRUG/USE POSSESSION BY SCDC INMATES

DRUG SANCTIONS MATRIX FOR THE USE OR POSSESSION OF NARCOTICS, MARIJUANA, OR UNAUTHORIZED DRUGS, INCLUDING PRESCRIPTION DRUGS (1.10)

Amd'L 08, 08, 11, 15, 15, 10, 15

Number	*Lock-up Period	Good Time ****	Telephone Privileges Suspended	Visitation Privileges Suspended	Extra Duty Imposed	Canteen Privileges Suspended
1	PHD	90 days or all if <90 days	30 days	120 days	5 hours	30 days
2	PHD	180 days or all if <180 days	60 days	240 days	10 hours	30 days
3	PHD	270 days or all if <270 days	90 days	300 days	15 hours	45 days
4	PHD	365 days or all if <365 days	120 days	360 days	20 hours	45 days
5 or more	PHD	365 days or all if <365 days	1 Year**	2 Years***	20 hours	45 days

* Pre-Hearing Detention in accordance with policy.
** 1 year suspension to be effective from date of conviction.
*** 2 year suspension to be effective from date of conviction.
****Youthful Offenders will be extended for an equivalent period of time.

1. ALL DRUG CHARGES FOR USE AND POSSESSION OF NARCOTICS, MARIJUANA, ETC. (DISCIPLINARY OFFENSE 1.10) WILL BE GRADED AS A LEVEL 1 MAJOR DISCIPLINARY INFRACTION.

2. FIRST CONVICTION FOR VIOLATION OF DISCIPLINARY OFFENSE 1.10 RESULTS IN AUTOMATIC LOSS OF ALL THE INMATE'S GRANDFATHERED ITEMS . . .

3. INMATES CONVICTED OF DISCIPLINARY OFFENSE 1.10, "THE USE OR POSSESSION OF NARCOTICS, MARIJUANA, OR UNAUTHORIZED DRUGS, INCLUDING PRESCRIPTION DRUGS," WILL HAVE THEIR VISITATION PRIVILEGES SUSPENDED. THESE INMATES WILL STILL RECEIVE ONCE A QUARTER VISITS PREVIOUSLY AUTHORIZED UNDER CHANGE 8 (PUBLISHED ON 12/07/00) TO OP-22.09, HOWEVER, THESE VISITS WILL BE NON-CONTACT.

APPENDIX O

Tennessee Department of Correction
Administrative Policies and Procedures
Index #507.01 & 507.01.01

***

Index #507.01

VI. PROCEDURES: . . .

F. Denial, Termination, and Suspension of Visits . . .

4. Other than as specified in Policy #502.01 (or #9502.01 for privately managed facilities), only the warden can suspend visitation privileges. In addition to the visitor involved in misconduct, the warden may suspend all of the inmate's approved visitors, except attorneys and ministers unless they are personally involved, and the inmate's immediate family who were not involved in the misconduct, for any misconduct involving the inmate and a visitor. Upon determining that visitation shall be suspended, the warden shall provide a written notice to the inmate, visitor, and visitation staff. The statement of reasons may be limited to the extent it would jeopardize the security of the institution or the safety of any individual. Visiting privileges may be suspended for up to six (6) months for any reason, including, but not limited to, the following:

a. Upon reviewing a denial/termination report, the warden determines suspension is warranted

b. The visitor(s) and/or inmate have become intoxicated during the visit

c. Visitor repeatedly violated visiting rules

d. Visitor continually failed to control children

e. Visitor exhibits other behavior and action which the warden in his/her discretion decides could jeopardize the security of the institution

f. Any visitor refusing a search of any type may be permanently restricted from visiting at any TDOC facility

g. Inappropriate sexual contact. . . .

7. In all instances where inmates test positive for or are in possession of illegal drugs, or refuse to comply with a request for a drug screen, in addition to appropriate disciplinary actions, the warden shall modify the inmate's visits according to the following:

a. First Offense - Visits shall be suspended for six (6) months.

b. Subsequent Offenses - Visits shall be suspended for one (1) year.

c. Attorney and minister visits are not affected by this section. . . .

***

VI. PROCEDURES:

A. Institutional policy shall define reasons for use of a non-contact visitation area and may include, but not be limited to, the following:

1. As an alternative to suspension of visitation privileges. . . .

APPENDIX P

CODE OF FEDERAL REGULATIONS
TITLE 28--JUDICIAL ADMINISTRATION
CHAPTER V--BUREAU OF PRISONS, DEPARTMENT OF JUSTICE
SUBCHAPTER C--INSTITUTIONAL MANAGEMENT
PART 540--CONTACT WITH PERSONS IN THE COMMUNITY
SUBPART D--VISITING REGULATIONS

***

Current through Nov. 5, 2002; 67 FR 67494

§ 540.52 Penalty for violation of visiting regulations.

Any act or effort to violate the visiting guidelines of an institution may result in disciplinary action against the inmate, which may include the denial of future visits, possibly over an extended period of time. Moreover, criminal prosecution may be initiated against the visitor, the inmate, or both, in the case of criminal violations.

APPENDIX Q

U.S. Department of Justice
Office of Justice Programs



Bureau of Justice Statistics
Bulletin

July 2002, NCJ 195189

Prisoners in 2001

By Paige M. Harrison
and Allen J. Beck, Ph.D.
BJS Statisticians

The total number of prisoners under the jurisdiction of Federal or State adult correctional authorities was 1,406,031 at yearend 2001. During the year the States added 3,193 prisoners, and the Federal prison system added 11,577 prisoners. Overall, the Nation's prison population grew 1.1%, which was less than the average annual growth of 3.8% since yearend 1995. During 2001 the prison population rose at the lowest rate since 1972 and had the smallest absolute increase since 1979.

The rate of incarceration in prison at yearend 2001 was 470 sentenced inmates per 100,000 U.S. residents -- up from 411 in 1995. About 1 in every 112 men and 1 in every 1,724 women were sentenced prisoners under the jurisdiction of State or Federal authorities.

Overall, the United States incarcerated 2,100,146 persons at yearend 2001. This total represents persons held in --

- Federal and State prisons (1,324,465, which excludes State and Federal prisoners in local jails)
- territorial prisons (15,852)
- local jails (631,240)
- facilities operated by or exclusively for the U.S. Immigration and Naturalization Service (8,761)
- military facilities (2,436)
- jails in Indian country (1,912)
- juvenile facilities (108,965 as of October 1999).

Highlights

December 31	Number of inmates		Sentenced prisoners per 100,000 resident population		Population housed as a percent of highest capacity	
	Federal	State	Federal	State	Federal	State
1990	65,526	708,393	26	272	--	115%
1995	100,250	1,025,624	32	376	126%	114
1999	135,246	1,238,466	42	434	132	101
2000	145,416	1,245,845	44	425	131	100
2001	156,993	1,249,038	48	433	131	101

--Not available

- During 2001, 10 States experienced prison population decreases, led by New Jersey (down 5.5%), followed by Utah (-5.2%), New York (- 3.8%), and Texas (-2.8%). Other States had increases, led by West Virginia (up 9.3%), Alaska (8.9%), Idaho (8.5%), Oregon (8.3%), and Hawaii (7.9%).
- Between July 1, 2001, and December 31, 2001, the number of inmates under State jurisdiction declined by 3,705 inmates (down 0.3%), repeating the same pattern of decline first observed in the last 6 months of 2000.
- The Federal Bureau of Prisons continued to grow rapidly, up 4,205 inmates since midyear 2001. At yearend 2001, the Federal system was the third largest prison system, behind Texas (162,070) and California (159,444). If growth rates remain unchanged, the Federal system will be the largest by yearend 2002.
- At yearend 2001, privately operated facilities housed 91,828 inmates (5.8% of State and 12.3% of Federal inmates); local jails housed 70,881 State and Federal inmates (5.0% of all prisoners).
- On December 31, 2001, State prisons were operating between 1% and 16% above capacity, while Federal prisons were operating at 31% above capacity.
- At yearend 2001, 93,031 women were in State or Federal prisons -- 6.6% of all prison inmates.
- Since 1995 the number of male prisoners has grown 24% (reaching 1,313,000 in 2001), while the number of female prisoners has increased 36%.
- At yearend 2000, 49% of State prisoners were serving time for violent offenses, up from 46% in 1990.
- Violent offenders accounted for 55% of the increase among male inmates and 33% of the increase among female inmates.
- Among the more than 1.3 million sentenced inmates at yearend 2001, an estimated 441,700 were black males between the ages of 20 and 39. At yearend 2001, 10.0% of black males age 25 to 29 were in prison, compared to 2.9% of Hispanic males and 1.2% of white males in the same age group.

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More than 1.96 million in prisons and local jails

On December 31, 2001, 1,324,465 inmates were in the custody of State and Federal prison authorities, and 631,240 were in the custody of local jail authorities (table 1). Since yearend 2000 the total incarcerated population has increased by 24,738. Including inmates in public and privately operated facilities, the number of inmates in State prisons increased 0.4% during 2001; the number in Federal prisons, 7.0%; and in local jails, 1.8%. During 2001 the total incarcerated population grew 1.3% – about a third of the annual average (3.8%) since 1995.

The rate of incarceration in prison and jail was 686 inmates per 100,000 residents in 2001, up from 601 in 1995. At yearend 2001, 1 in every 148 U.S. residents were incarcerated in State or Federal prison or a local jail.

U.S. prison population rose 1.1% during 2001 — the smallest annual growth rate since 1972

The 2001 growth in the number of inmates under State or Federal jurisdiction (1.1%) was lower than the percentage increase recorded during 2000 (1.3%) and the lowest annual rate recorded since 1972 (table 2). The population under the jurisdiction of State and Federal authorities increased by 14,770 inmates during 2001, lower than the increase in 2000 (up 18,191). Since December 31, 1995, the prison population has grown an average of 41,919 inmates per year.

Since 1995 the overall growth of the Nation's prison population has steadily slowed (figure 1). Annual growth rates dropped from 6.7% in 1995 to 1.1% in 2001. In absolute numbers, the annual increase in prisoners under State or Federal jurisdiction fell from 71,172 in 1995 to 14,770 in 2001.

Table 1. Number of persons held in State or Federal prisons or in local jails, 1990-2001

	Total inmates in custody	Prisoners in custody on December 31: Federal	State	Inmates in jail on June 30	Incarceration rate*
1990	1,148,702	58,838	994,544	435,203	458
1995	1,585,586	89,538	989,004	507,044	601
1996	1,646,020	95,088	1,032,440	518,492	619
1997	1,743,643	101,755	1,074,909	567,079	645
1998	1,816,931	110,793	1,113,578	592,482	669
1999	1,893,115	125,682	1,161,490	605,943	691
2000	1,937,482	133,921	1,176,269	621,149	684
2001	1,962,226	143,257	1,181,129	631,240	686
Percent change, 2000-2001	1.3%	7.0%	0.4%	1.6%	
Average annual increase, 1995-2001	3.6%	8.2%	3.0%	3.7%	

Note: Counts include all inmates held in public and private adult correctional facilities. Jail counts for 1995-2001 exclude persons supervised outside of a jail facility.
*Number of prison and jail inmates per 100,000 U.S. residents at yearend. Rates for 2000 have been revised using estimates based on the 2000 Census of Population and Housing. For 1999, 15 States expanded their reporting criteria to include inmates held in privately operated correctional facilities. For comparisons with previous years, the State count is 1,197,564 and the total count 1,869,169 (incl. jail).
†Total counts include Federal inmates in nine secure privately operated facilities (5,816 in 2001 and 6,143 in 2000).

Table 2. Change in the State and Federal prison populations, 1995-2001

	Annual increase in the number of prisoners: Males	Females	Total	Percent change*
1995	63,995	7,177	71,172	6.7%
1996	49,444	5,750	55,194	5.1
1997	46,200	4,705	50,905	4.6
1998	47,865	5,420	53,285	4.7
1999	36,357	4,796	41,153	3.4
2000	25,192	5,191	30,383	2.5
2001	14,275	495	14,770	1.1
Average annual increase, 1995-2001	37,057	4,876	41,919	3.3%

Note: In years in which States changed their reporting methods, counts based on comparable methods were used to calculate the annual increase and percent change. See Methodology for changes by State.
*Change in the number of prisoners under State and Federal jurisdiction.

Percent change during 6-month periods in the number of prisoners under the jurisdiction of State correctional authorities, 1995-2001

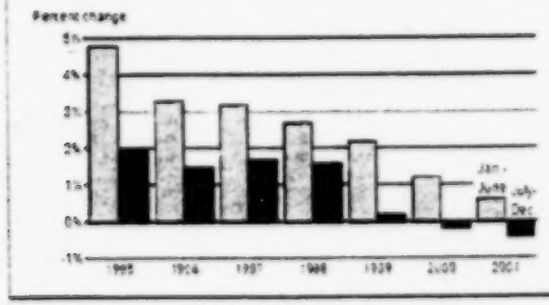


Figure 1

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Twelve States reported increases of at least 5% during 2001; 10 States reported decreases

Between January 1 and December 31, West Virginia experienced the largest increase (up 9.3%), followed by Alaska (8.9%), Idaho (8.5%), and Oregon (8.3%) (table 3). Ten States experienced a decline in prison populations. New Jersey had the largest decline (down 5.5%), followed by Utah (down 5.2%), New York (down 3.8%), Texas (down 2.8%), and California (down 2.2%). The District of Columbia (down 83.1%) transferred responsibility for sentenced felons to the Federal Bureau of Prisons. (See page 4.)

In absolute numbers of inmates, 10 jurisdictions grew by at least 1,000 inmates. The Federal system (up 11,577), experienced the largest growth, followed by Georgia (up 1,705), and Tennessee (up 1,506). Four States had decreases of at least 1,000 inmates. Texas (down 4,849) experienced the greatest decline, followed by California (down 3,557), New York (down 2,865), and New Jersey (down 1,642).

In the last 6 months of 2001, the State prison population declined about 3,700 inmates

Between July 1, 2001, and December 31, 2001, the number of inmates under State jurisdiction dropped 0.3% (from 1,252,743 at midyear to 1,249,038 at yearend). At the same time the Federal population continued to grow (up 2.6% from midyear 2001). In the last 6 months of 2001, the Federal population rose 4,205, compared to an increase of 7,372 inmates in the first 6 months.

Prisoners under the jurisdiction of State or Federal correctional authorities, 1999-2001

Date	State*	Federal
06/30/99	1,224,654	130,976
12/31/99	1,229,865	135,248
06/30/00	1,248,414	142,530
12/31/00	1,245,945	145,416
06/30/01	1,252,743	152,788
12/31/01	1,249,038	156,993

*See Prison and Jail Inmates at Midyear 2001 (NCJ 191702) for State counts for June 30, 2000, and 2001.

Table 3. Prisoners under the jurisdiction of State or Federal correctional authorities, by region and jurisdiction, June 30, 2000 to December 31, 2001

Region and jurisdiction	Total 12/31/01	Total 06/30/01	Total 12/31/00	Total 06/30/00	Percent change 12/31/01 – 6/30/01	Percent change 12/31/01 – 12/31/00
U.S. total	1,406,231	1,404,541	1,391,261	1,380,944	1.1%	0.0%
Federal	156,993	152,788	145,416	142,530	9.0	2.8
State	1,249,038	1,252,743	1,245,845	1,238,414	-0.3	-0.9
Northeast	172,812	172,905	174,829	177,965	-1.3%	-0.2%
Connecticut*	19,126	18,875	19,355	19,616	4.8	1.7
Maine	1,704	1,693	1,679	1,715	1.5	0.6
Massachusetts	10,603	10,734	10,722	11,150	-1.7	-1.2
New Hampshire	2,392	2,333	2,257	2,254	6.0	3.0
New Jersey	28,142	28,108	29,784	31,061	-5.5	0.1
New York	67,534	69,150	70,109	71,891	-3.8	-2.5
Pennsylvania	35,052	37,105	36,847	36,817	9.3	2.6
Rhode Island*	3,241	3,147	3,386	3,199	-1.4	3.0
Vermont*	1,741	1,760	1,697	1,655	2.8	-2.3
Midwest	240,739	240,219	237,378	236,804	1.4%	0.2%
Illinois	44,348	45,629	45,287	44,819	-2.1	-2.9
Indiana	20,998	20,576	20,125	19,674	4.2	1.9
Iowa*	7,962	8,101	7,955	7,846	0.1	-1.7
Kansas	8,877	8,540	8,344	8,780	2.8	6.4
Michigan	48,549	48,371	47,718	47,317	2.3	1.0
Minnesota	6,408	6,514	6,298	6,210	4.9	1.4
Missouri	28,787	28,187	27,543	27,292	4.4	2.1
Nebraska	3,587	3,644	3,695	3,663	-1.1	-0.2
North Dakota	1,***	1,090	1,076	1,104	3.8	2.9
Ohio	45,311	45,804	45,833	46,033	-1.2	-0.9
South Dakota	2,810	2,673	2,616	2,571	7.6	5.2
Wisconsin	21,493	20,931	20,784	20,791	3.6	2.9
South	562,259	562,815	561,214	561,593	-0.2%	-0.8%
Alabama	28,741	27,269	26,332	25,798	1.6	2.0
Arkansas	12,169	12,093	11,914	11,553	0.6	1.4
Delaware*	7,006	7,122	6,902*	7,049	-1.6	1.5
Dist. of Columbia*	2,750	4,668	7,956	8,575	-83.1	-65.4
Florida*	72,404	72,007	71,319	71,283	1.5	1.5
Georgia*	46,937	46,363	44,232	43,826	3.9	1.9
Kentucky	15,424	15,400	14,916	15,444	0.2	0.2
Louisiana	36,710	36,484	36,207	34,734	1.4	0.6
Maryland	23,782	23,973	23,538	23,794	0.9	-0.9
Mississippi	21,486	20,672	20,511	19,264	6.0	3.6
North Carolina	31,979	31,142	31,396	31,079	4.3	2.7
Oklahoma	23,799	23,139	23,181*	23,039	1.7	1.6
South Carolina	22,574	22,267	21,778	23,154	3.7	1.4
Tennessee	23,671	23,169	22,165	22,586	6.9	3.2
Texas	163,070	164,485	166,719	165,126	-2.6	-1.9
Virginia	31,673	30,473	30,164	29,890	4.6	3.7
West Virginia	4,219	4,130	3,956	3,830	9.3	3.1
West	270,468	276,707	272,427	272,642	-0.4%	-1.9%
Alaska*	4,526	4,197	4,175	4,024	8.9	5.8
Arizona*	27,170	27,128	26,510	26,287	4.5	2.1
California	159,224	162,968	163,001	164,490	-2.2	-3.5
Colorado	17,448	17,122	16,932	16,319	3.7	1.9
Hawaii*	5,458	5,412	5,053	5,051	7.9	0.8
Idaho	6,006	5,689	5,536	5,466	8.5	4.8
Montana	3,538	3,250	3,105	3,030	7.2	2.4
Nevada	10,201	10,291	10,063	9,930	1.4	-0.9
New Mexico	5,668	5,289	5,342	5,277	8.1	7.2
Oregon	11,488	11,077	10,590	10,313	8.3	9.4
Utah	5,340	5,440	5,637	5,450	-5.2	-1.0
Washington	15,195	15,242	14,915	14,704	1.8	-0.5
Wyoming	1,484	1,879	1,690	1,722	0.2	0.3

*Prisons and jails form one integrated system. Data include total jail and prison population.
†Inmates in facilities are based on custody counts. See Jurisdiction notes.)
‡Responsibility for sentenced felons was transferred to the Federal Bureau of Prisons. (See Jurisdiction notes.)

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$mO6, 15, 10, 10, 10, 15

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$mO4HL, 19, 13, 13, 13

$mO3HL, 20, 20

Minnesota
Nebraska
Arkansas
Delaware
Louisiana
Montana

Table 4. Sentenced prisoners under the jurisdiction of State or Federal correctional authorities, yearend 2000 and 2001

Region and jurisdiction	Sentenced prisoners Adjusted 2001	Sentenced prisoners 2000	Percent change 2000-01	Incarceration rate 2001[a]
U.S. total	1,344,512[b]	1,329,387	1.1%	470
Federal	131,506	125,044	5.2	46
State	1,213,006	1,204,343	0.7	424
Northeast	163,539	166,823	-1.9%	304
Connecticut	12,274	13,156	-6.7	357
Maine	1,641	1,635	0.4	127
Massachusetts[c]	9,350	9,479	-1.3	243
New Hampshire	2,362	2,257	4.7	186
New Jersey[c]	26,142	29,784	-12.2	331
New York	67,584	70,166	-3.7	365
Pennsylvania	38,057	36,844	3.3	310
Rhode Island	1,926	1,966	-2.0	191
Vermont	1,313	1,313	0.0	213
Midwest	239,579	236,458	1.3%	370
Illinois[c]	44,948	45,281	-0.7	365
Indiana	20,583	19,811	3.9	341
Iowa[c]	7,962	7,995	-0.4	272
Kansas[c]	8,577	8,344	2.8	318
Michigan[c]	48,849	47,718	2.4	488
Minnesota	8,509	8,228	3.4	192
Missouri	29,736	27,519	8.1	509
Nebraska	3,985	3,896	2.3	225
North Dakota	1,017	994	2.3	161
Ohio[c]	45,281	45,439	-0.3	396
South Dakota	2,632	2,613	0.7	370
Wisconsin[c]	20,751	20,336	2.0	369
South	539,580	537,186	0.5%	508
Alabama	28,189	24,123	--	594
Arkansas	12,378	11,861	1.9	447
Delaware	4,034	3,957	2.0	504
Dist. of Columbia[d]	795	5,008	--	--
Florida	72,868	71,916	1.5	427
Georgia	46,904	44,747	4.6	542
Kentucky	16,106	14,979	1.2	377
Louisiana	35,710	35,207	1.4	800
Maryland	23,842	23,446	1.6	422
Mississippi	20,476	19,259	6.4	718
North Carolina	27,532	27,369	0.6	335
Oklahoma	22,783	23,181	-1.7	658
South Carolina	21,539	21,017	2.5	559
Tennessee[e]	33,571	32,196	4.3	611
Texas[c]	163,058	159,305	2.4	711
Virginia	31,186	29,943	5.2	421
West Virginia	4,164	3,795	9.7	221
West	266,158	264,147	0.4%	408
Alaska	1,920	2,129	-9.8	350
Arizona	26,462	25,412	4.1	492
California	157,308	160,413	-1.9	453
Colorado	17,648	16,838	3.7	381
Hawaii	3,670	3,959	-6.8	284
Idaho	6,806	6,926	-1.7	491
Montana	3,328	3,106	7.0	369
Nevada	10,301	10,082	1.4	474
New Mexico	5,418	4,366	15.9	295
Oregon	11,413	10,502	8.1	327
Utah	5,250	5,541	-5.2	230
Washington	15,020	14,596	2.4	288
Wyoming	1,904	1,880	0.2	340

--Not calculated.
[a]Prisoners with sentences of more than 1 year per 100,000 residents.
[b]The incarceration rate includes an estimated 6,200 inmates sentenced to more than 1 year but held in local jails or houses of corrections. Includes some inmates sentenced to 1 year or less.
[c]Responsibility for sentenced felons was transferred to the Federal Bureau of Prisons. (See Jurisdiction notes.)

Since January 1, 1995, 6-month growth rates for all States combined have dropped sharply. In addition, growth rates in the first half of each year have been substantially larger than rates in the second half. At the same time, Federal growth rates rose, reaching a peak of 6.0% in the first 6 months of 1999. Since then, growth in the first half of each year slowed (to 5.4% in 2000 and 5.1% in 2001).

Federal growth rates in 6-month intervals

	January-June	July-December
1995	4.7%	11.9%
1996	3.5	3.8
1997	4.4	2.6
1998	5.3	3.5
1999	6.0	3.7
2000	5.4	2.0
2001	5.1	2.9

Federal and State growth affected by the transfer of sentenced felons from the District of Columbia

The transfer of responsibility for sentenced felons from the District of Columbia to the Federal system was completed by yearend 2001. Since June 30, 2000, the inmate population in the District of Columbia has dropped by 5,825 inmates (down 88% in 18 months). On December 31, 2001, the Federal system held 6,930 inmates from the District of Columbia, up from 4,486 on June 30, 2001, and 2,858 on December 31, 2000. Approximately 58% of the growth in the Federal system in the last 6 months of 2001 was the result of this transfer of responsibility.

Excluding the shift of inmates from the District of Columbia to the Federal system, the overall drop in the State prison population in the last 6 months of 2001 totaled 1,261 inmates (a decline of 0.1%).

Sentenced Federal inmate population rose 9.2% during the last 12 months

Prisoners with sentences of more than 1 year ("sentenced prisoners") represented 97% of the total State prison population and 87% of the Federal prison population at yearend 2001. During the 12-month period, the sentenced prison population grew 1.1% (table 4). The remaining prisoners had sentences of a year or less or were currently unsentenced.

While the State sentenced prison population rose 0.3% during 2001, the sentenced Federal prison population grew 9.2%. The Federal prison system added 11,465 sentenced prisoners -- the equivalent of more than 220 new inmates per week.

(q4)

Prison incarceration rates continue to rise

The incarceration rate of State and Federal prisoners sentenced to more than 1 year was 470 per 100,000 U.S. residents at yearend 2001, up from 469 at yearend 2000. Rates of incarceration have risen steadily. Previously published rates have changed as a result of shifting to population estimates from the 2000 decennial census.

	Estimated number (000's) of U.S. resident population at yearend		Number of sentenced inmates per 100,000 U.S. residents at yearend	
	1990 Census	2000 Census	1990 Census	2000 Census
1995	274,051	281,590	426	423
2000	275,578	282,647	461	469
2001	[1]	285,200	[1]	470

--Not calculated.
[1]The resident population for yearend 1999 was estimated by calculating the monthly growth rate from April 1, 2000, to July 1, 2000, and assuming a constant rate for the 3 months prior to the April count.

Incarceration rates prior to yearend 2000 were based on population estimates using the *1990 Census of Population and Housing*. The rate at yearend 1999 was 476 per 100,000. However, if the 2000 census had been used to estimate the yearend 1999 resident population, the revised incarceration rate would have been 483.

Of the 12 States with rates greater than that for the Nation at yearend 2001, 8 were in the South, 2 were in the West, and 2 were in the Midwest. Two States -- Maine (127) and Minnesota (132) -- had rates that were less than a third the national rate. The District of Columbia, a wholly urban jurisdiction, was not calculated due to the transfer of responsibility of sentenced felons to the Federal system.

Since 1995 the number of sentenced prisoners per 100,000 residents has risen from 411 to 470. During this period, incarceration rates rose most in the South (from 483 to 526) and West (from 358 to 408). The rate in the Midwest rose from 310 to 370, and the rate in the Northeast grew slightly from 301 to 304. The number of sentenced Federal prisoners per 100,000 U.S. residents increased from 32 to 48.

Since 1995 the sentenced inmate population in State prisons has grown 21% (table 5). During this period 10 States increased their sentenced inmate populations by at least 50%, led by North Dakota (up 87%), Idaho (up 81%), and Oregon (up 75%). Between 1995 and 2001 the Federal system reported an additional 52,846 inmates sentenced to more than year, an increase of 63%.

Table 5. Change in the number of sentenced prisoners under the jurisdiction of State or Federal correctional authorities, 1995-2001

Region and jurisdiction	1995-2001 Population difference	1995-2001 Percent change	Average annual percent change
U.S. total	259,490	23.9%	3.5%
Federal	52,846	63.2%	8.5%
State	206,644	20.6%	3.0
Northeast	8,639	5.6%	0.9%
Connecticut	2,957	27.4	4.1
Maine	315	23.8	3.6
Massachusetts[a]	-1,089	-10.3	-1.8
New Hampshire	377	18.7	2.9
New Jersey	1,076	4.0	0.7
New York	952	1.4	0.2
Pennsylvania	5,647	17.4	2.7
Rhode Island	99	5.4	0.9
Vermont	285	25.8	3.8
Midwest	47,901	24.7%	3.7%
Illinois	6,890	17.9	2.8
Indiana[a]	4,837	30.1	4.5
Iowa	2,056	34.8	5.1
Kansas	1,522	21.6	3.3
Michigan[a]	7,737	18.8	2.9
Minnesota	1,760	26.2	3.9
Missouri	9,902	50.2	7.0
Nebraska	859	28.8	4.3
North Dakota	471	86.9	11.0
Ohio	818	1.4	0.2
South Dakota	930	49.4	7.0
Wisconsin	10,464	--	--
South	93,089	20.8%	3.1%
Alabama	5,305	29.2	4.4
Arkansas	3,556	41.7	6.0
Delaware	1,120	33.8	5.0
Dist. of Columbia	-5,247	--	--
Florida	8,930	13.4	2.1
Georgia	11,736	34.8	5.0
Kentucky	3,044	25.3	3.8
Louisiana	10,515	41.9	6.0
Maryland	3,992	11.7	1.9
Mississippi	9,225	57.1	8.9
North Carolina[a]	-262	-1.0	-0.2
Oklahoma	4,429	25.5	3.9
South Carolina	2,591	13.6	2.1
Tennessee	8,985	55.7	7.7
Texas	25,190	19.8	3.1
Virginia	3,804	14.4	2.3
West Virginia	1,881	67.1	9.0
West	97,445	27.7%	4.2%
Alaska	-124	-6.0	-1.0
Arizona	8,173	30.4	4.6
California[a]	25,850	19.4	3.0
Colorado	6,395	57.7	8.4
Hawaii	1,080	41.7	6.5
Idaho	2,578	80.5	10.3
Montana	1,329	66.5	8.9
Nevada	2,499	32.8	4.8
New Mexico	1,438	37.9	5.4
Oregon	4,898	75.2	9.6
Utah	1,903	53.3	7.9
Washington	3,472	29.4	4.4
Wyoming	284	20.7	3.2

--Not calculated, because of changes in reporting procedures.
[a]Growth may be slightly overestimated due to changes in reporting from custody to jurisdiction counts.
[b]Excludes sentenced inmates held in local jails or houses of corrections.
[c]Responsibility for sentenced felons was transferred to the Federal Bureau of Prisons.

(q5)

Table 6. The 10 highest and lowest jurisdictions for selected characteristics of the prison population, yearend 2001

Prison population	Number of inmates	Incarceration rate, 2001	Rate per 100,000 State residents*	1-year growth 2000-2001	Percent change	Growth since 1995	Average percent change*
10 highest:							
Texas	162,070	Louisiana	800	West Virginia	9.3%	North Dakota	11.0%
California	159,444	Mississippi	715	Alaska	6.4	Idaho	10.8
Federal	156,933	Texas	711	Idaho	6.1	Oregon	9.8
Florida	72,456	Oklahoma	656	Oregon	6.0	West Virginia	9.0
New York	67,534	Alabama	584	Federal	6.0	Montana	8.9
Michigan	48,649	Georgia	542	Hawaii	5.9	Mississippi	8.9
Georgia	45,937	South Carolina	539	South Dakota	5.5	Federal	8.6
Ohio	45,291	Missouri	509	Montana	5.2	Colorado	7.9
Illinois	44,348	Delaware	504	Tennessee	4.8	Tennessee	7.7
Pennsylvania	39,062	Arizona	492	New Mexico	4.1	Utah	7.3
10 lowest:							
North Dakota	1,111	Maine	127	New Jersey	-5.5%	Massachusetts	-1.9%
Wyoming	1,604	Minnesota	132	Utah	-5.2	Alaska	-1.0
Maine	1,704	North Dakota	161	New York	-3.8	New York	-0.2
Vermont	1,741	Rhode Island	181	Texas	-2.8	Ohio	0.2
New Hampshire	2,892	New Hampshire	189	California	-2.2	New Jersey	0.7
South Dakota	2,912	Vermont	213	Illinois	-2.1	Rhode Island	0.8
Rhode Island	3,341	Nebraska	225	Oklahoma	-1.7	Maryland	1.9
Montana	3,378	Utah	230	Rhode Island	-1.4	Florida	2.1
Nebraska	3,987	West Virginia	231	Ohio	-1.2	South Carolina	2.2
West Virginia	4,215	Massachusetts	249	Massachusetts	-1.1	Virginia	2.3

*The number of prisoners with a sentence of more than 1 year per 100,000 residents in the State population. The Federal Bureau of Prisons and the District of Columbia are excluded.
*The average annual percent change from 1995 to 2001 in sentenced prisoners.

Louisiana had the highest incarceration rate; Maine, the lowest

At yearend 2001 the 10 jurisdictions with the largest prison populations had under their jurisdiction 640,864 inmates. 60% of the Nation's total prison population (table 6). Texas (162,070), California (159,444), and the Federal system (156,933) held a third of the population. The 10 States with the smallest prison populations collectively held 1.8% of the Nation's total prison population.

Louisiana had the highest prison incarceration rate (800 sentenced inmates per 100,000 residents), followed by Mississippi (715), Texas (711), and Oklahoma (656). Six States had prison incarceration rates below 200, led by Maine (127), Minnesota (132), and North Dakota (161).

Since 1995 two States had average annual prison population increases of at least 10% — North Dakota (11%) and Idaho (10.3%). Massachusetts (-1.8%), Alaska (-1%), and New York (-0.2%) had decreases.

Male and female incarceration rates stable from yearend 2000 to 2001

During 2001 the number of women under the jurisdiction of State or Federal prison authorities decreased by 0.2%, while the number of men incarcerated in a State or Federal prison rose 1.2% (table 7). At yearend 2001 there were 93,031 women and 1,313,000 men in State or Federal prisons.

Since 1995 the annual rate of growth of the female inmate population has averaged 5.2%, higher than the 3.7% average increase in the number of male inmates. While the total number of male prisoners has grown 24% since 1995, the number of female prisoners has increased 36%. By yearend 2001 women accounted for 6.6% of all prisoners, up from 6.1% in 1995.

Relative to their number in the U.S. resident population, men were about 15 times more likely than women to be incarcerated in a State or Federal prison. At yearend 2001 there were 58 sentenced female inmates per 100,000 women in the United States, compared to 896 sentenced male inmates per 100,000 men.

Table 7. Prisoners under the jurisdiction of State or Federal correctional authorities, by gender, yearend 1995, 2000, and 2001

	Men	Women
All inmates		
Advance 2001	1,313,000	93,031
Final 2000	1,298,027	90,334
Final 1995	1,057,408	68,468
Percent change -2000-2001	1.2%	-0.2%
Average annual -1995-2001	3.7	5.2
Sentenced to more than 1 year		
Advance 2001	1,259,491	85,031
Final 2000	1,246,234	85,044
Percent change, -2000-2001	1.1%	0.0%
Incarceration rate*		
2001	896	58
1995	769	47

*The number of prisoners with sentences of more than 1 year per 100,000 residents on December 31

(q6)

Table 8. Women under the jurisdiction of State or Federal correctional authorities, 1995-2001

Region and jurisdiction	Number of female inmates 2001	2000	1995	Percent change 2000 to 01	Average 1995 to 01*	Incarceration rate, 2001*
U.S. total	93,031	93,234	68,468	-0.2%	5.2%	58
Federal	10,973	10,247	7,259	7.1	6.8	6
State	82,058	82,988	61,210	-1.1	5.0	52
Northeast	9,111	9,382	8,401	-2.9%	1.4%	29
Connecticut	1,447	1,456	975	-0.6	6.8	46
Maine	68	68	36	-10.6	8.6	8
Massachusetts	716	663	656	8.0	1.5	13
New Hampshire	129	120	109	7.5	2.8	20
New Jersey	1,626	1,650	1,307	-1.5	3.7	37
New York	4,133	4,390	3,815	-4.5	-2.4	22
Pennsylvania	1,711	1,579	1,401	8.4	2.3	27
Rhode Island	163	225	157	-19.9	0.5	10
Vermont	92	40	44	18.8	13.7	16
Midwest	14,978	14,598	10,864	1.9%	5.4%	45
Illinois	2,747	2,949	2,196	-2.6	3.8	43
Indiana	1,543	1,483	892	6.2	9.6	49
Iowa	635	562	425	7.3	6.9	43
Kansas	497	504	449	-1.4	1.7	36
Michigan	2,149	2,131	1,842	0.8	2.6	42
Minnesota	383	368	217	4.1	9.9	15
Missouri	2,124	1,909	1,174	6.6	10.4	73
Nebraska	342	356	311	-3.6	1.4	38
North Dakota	101	69	29	49.5	23.1	27
Ohio	2,829	2,909	2,793	-0.7	0.2	49
South Dakota	220	200	134	11.0	8.8	58
Wisconsin	1,307	1,367	902	-4.4	17.3	47
South	39,138	39,652	27,366	-1.3%	8.1%	69
Alabama	1,782	1,836	1,295	-2.9	5.5	74
Arkansas	796	772	523	3.1	7.4	61
Delaware	591	597	369	-1.0	8.7	62
Dist. of Columbia	169	168	834	--	--	--
Florida	4,261	4,105	3,660	4.0	2.6	50
Georgia	2,934	2,759	2,036	2.9	4.7	66
Kentucky	1,139	1,181	734	7.3	7.6	52
Louisiana	2,262	2,279	1,424	-1.9	8.0	96
Maryland	1,207	1,219	1,078	-1.0	1.9	38
Mississippi	1,829	1,693	791	9.2	14.9	113
North Carolina	2,015	1,903	1,753	5.9	2.4	35
Oklahoma	2,290	2,304	1,115	-4.3	4.0	130
South Carolina	1,569	1,420	1,045	6.3	6.2	65
Tennessee	1,488	1,363	637	7.2	14.9	50
Texas	12,369	13,622	7,935	-9.2	7.7	96
Virginia	2,240	2,059	1,659	8.8	5.1	59
West Virginia	346	309	129	14.2	17.9	30
West	18,931	19,657	14,439	-3.7%	4.6%	55
Alaska	378	394	343	-3.4	1.5	83
Arizona	2,143	1,984	1,432	10.4	7.2	72
California	9,921	11,161	9,042	-11.1	1.5	55
Colorado	1,378	1,203	713	9.2	11.6	62
Hawaii	676	561	312	9.8	12.0	95
Idaho	563	488	272	14.3	17.7	84
Montana	369	306	113	18.6	21.7	79
Nevada	859	746	530	0.3	9.0	78
New Mexico	517	511	378	1.2	10.9	90
Oregon	993	893	465	11.2	6.1	37
Utah	314	331	161	-17.1	11.9	26
Washington	1,075	1,085	759	-1.0	5.3	35
Wyoming	134	156	103	-13.6	4.1	54

-- Not calculated due to the transfer to the Federal system.
*The average annual percentage increase from 1995 to 2001.
*The number of female prisoners with sentences of more than 1 year per 100,000 U.S. residents.
*Growth from 1995 to 2001 may be slightly overestimated due to a change in reporting from custody to jurisdiction counts.

Over a third of all female prisoners were held in the 3 largest jurisdictions

Texas (12,369), the Federal system (10,973), and California (9,921) held more than a third of all female inmates (table 8). Oklahoma (with 130 sentenced female inmates per 100,000 female State residents), Mississippi (113), Louisiana (99), and Texas (96) had the highest female incarceration rates. Those with the lowest female incarceration rate were concentrated in the Northeast: Maine (with 8 sentenced female prisoners per 100,000 female residents), Rhode Island (10), and Massachusetts (13).

Since 1995 the female prisoner population has grown at an annual average rate of at least 10% in 13 States. North Dakota reported the highest average annual increase in female prisoners (23%), followed by Montana (22%), West Virginia and Idaho (both up 18%), and Wisconsin (17%). New York (-2.4%) was the only State to report a decrease in female prisoners since 1995.

Privately operated prisons held nearly 92,000 State and Federal inmates in 2001

At yearend 2001, 32 States, the District of Columbia, and the Federal system reported a total of 91,828 prisoners held in privately operated facilities (table 9). These private facilities held 5.8% of all State prisoners and 12.3% of Federal prisoners. Among States, Texas (with 16,331 State inmates housed in private facilities) and Oklahoma (with 6,658) reported the largest number in 2000. Five States -- New Mexico (44%), Montana (33%), Alaska (32%), Oklahoma (29%), and Wyoming (28%) -- had at least 25% of their prison population housed in private facilities.

Except for Wisconsin (with 16% of its State inmates in private facilities), North Dakota, Ohio, and Indiana (with 4%), and New Jersey (with 9%), the use of private facilities was concentrated among Southern and Western States. Overall, 8.1% of State inmates in the South and 8.2% in the West were in privately operated facilities at the end of 2001.

(q7)

Table 9. State and Federal prisoners held in private facilities, local jails, or other States' facilities, by jurisdiction, yearend 2001

Region and jurisdiction	In private facilities: Number of inmates	In private facilities: Percent of inmates[a]	In local jails: Number of inmates	In local jails: Percent of inmates[a]	In other State or Federal facilities: Number of inmates	In other State or Federal facilities: Percent of inmates[a]
U.S. total	91,826	6.5%	70,681	5.0%	6,111	0.4%
Federal	19,261	12.9[b]	2,991	1.9[c]	1,194	0.8[c]
State	72,577	5.9[b]	67,790	5.4[c]	4,917	0.4[c]
Northeast	3,161	1.9%	2,593	1.5%	1,302	0.7%
Connecticut	0	0[c]	–	–	497	26.4
Maine	11	0.8	3	0.2	40	2.9
Massachusetts	0	0	420	4.0	91	0.9
New Hampshire	0	0	12	0.5	71	3.0
New Jersey	2,630	9.3	2,019	7.2	71	0.3
New York	0	0	129	0.2	0	0
Pennsylvania	500	1.3	0	0	45	0.1
Rhode Island	0	0	–	–	48	1.4
Vermont	0	0	–	–	391	22.5
Midwest	8,930	2.9%	2,192	0.9%	675	0.4%
Illinois	0	0	0	0	31	0
Indiana	915	4.4	1,330	9.8	0	0
Iowa	0	0	0	0	0	0
Kansas	46	1.1	0	0	89	1.0
Michigan	449	0.9	287	0.5	0	0
Minnesota	0	0	164	2.8	144	2.2
Missouri	0	0	0	0	347	0.9
Nebraska	0	0	0	0	26	0.7
North Dakota	0	0	21	1.9	21	1.9
Ohio	1,924	4.2	0	0	35	0.1
South Dakota	95	1.2	16	0.6	39	1.4
Wisconsin	2,466	10.0	414	1.9	243	1.1
South	45,840	9.1%	57,780	10.9%	1,143	0.2%
Alabama	0	0	601	9.0	461	16.1
Arkansas	0	0	961	7.8	38	0.3
Delaware	0	0	–	–	39	0.4
Dist. of Columbia	946	35.9	–	–	4	0.1
Florida	3,995	9.5	0	0	0	0
Georgia	4,561	9.9	4,652	10.2	0	0
Kentucky	1,035	5.7	4,708	30.5	18	0.1
Louisiana	2,233	9.2	16,050	44.9	0	0
Maryland	128	3.5	140	0.6	45	0.2
Mississippi	3,634	16.9	3,756	17.4	0	0
North Carolina	741	3.5	0	0	0	0
Oklahoma	6,668	29.3	909	4.0	70	0.3
South Carolina	5	0	446	2.0	280	1.3
Tennessee	3,679	15.5	6,230	26.5	0	0
Texas	16,331	10.1	15,189	9.4	0	0
Virginia	1,866	6.0	3,440	10.9	66	0.2
West Virginia	0	0	739	17.5	73	1.7
West	16,836	6.2%	5,193	1.9%	1,637	0.6%
Alaska	1,441	31.7	–	–	1	0
Arizona	1,439	5.2	349	1.3	101	0.4
California	4,452	2.5	2,727	1.7	626	0.4
Colorado	2,390	18.7	139	0.7	0	0
Hawaii	1,291	32.9	–	–	29	0.5
Idaho	1,348	22.4	249	4.1	91	1.5
Montana	1,047	23.7	496	14.9	37	1.1
Nevada	478	4.7	188	1.8	205	2.0
New Mexico	2,484	42.8	0	0	18	0.3
Oregon	0	0	8	0.1	209	1.8
Utah	0	0	1,020	19.1	146	2.7
Washington	0	0	10	0	61	0.5
Wyoming	478	28.5	27	1.6	91	5.4

–Not applicable. Prisons and jails form an integrated system.
[a]Based on the total number of inmates under State or Federal jurisdiction.
[b]Includes 6,515 Federal inmates in non-secure privately operated facilities.
[c]Inmates held in other State facilities include interstate compact cases.

Local jails held more than 70,000 State prisoners

At the end of 2001, 33 States, the District of Columbia, and the Federal system reported a total of 70,681 State and Federal prisoners held in local jails or other facilities operated by county or local authorities. These inmates held in local jails represented 5% of all prisoners in 2001. Approximately 11% of inmates in local jails were being held for State or Federal prison authorities.

Louisiana had the largest percentage of its State inmate population housed in local jails (45%). Two other States – Kentucky (31%) and Tennessee (26%) – had at least 25% of their population housed in local jail facilities.

In addition to housing inmates in privately operated facilities and local jails (within their own State and elsewhere), 38 States and the District of Columbia reported placing inmates in Federal facilities and in other State-operated facilities. On December 31, 2001, 6,111 prisoners nationwide were held under such arrangements – representing less than 1% of all State prisoners. California placed the most inmates (628), followed by Connecticut (497), Alabama (491), and Vermont (391). Vermont (23%) had more than 10% of its prison population housed in facilities of other States or the Federal system.

Prison capacity measures vary

Prison capacity and the extent of crowding are difficult to determine because of the absence of uniform measures for defining capacity. Jurisdictions apply a variety of capacity measures to reflect both the available space to house inmates and the ability to staff and operate an institution. To estimate the capacity of their prisons, jurisdictions were asked to supply three measures for yearend 2001: rated, operational, and design capacities.

(q8)

Table 10. Reported Federal and State prison capacities, yearend 2001

Region and jurisdiction	Type of capacity measure: Rated	Operational	Design	Custody population as a percent of –: Highest capacity[a]	Lowest capacity[a]
Federal	133,192			121 %	131%
Northeast					
Connecticut					
Maine	1,409	1,841	1,480	101 %	117%
Massachusetts			6,926	114 [b]	114[b]
New Hampshire	2,419	2,236	2,513	100	108
New Jersey			17,122	137	137
New York	81,844	64,462	54,527	105	124
Pennsylvania	33,757	33,757	28,168	110	142
Rhode Island	3,692	3,692	3,905	86	91
Vermont	1,311	1,261	1,220	103	116
Midwest					
Illinois	34,577	34,577	29,791	128 %	149%
Indiana	19,411	20,526		91	122
Iowa	6,772	6,772	6,772	118	118
Kansas	8,816			97	97
Michigan		49,534		98	98
Minnesota	6,592	6,592	6,592	97	97
Missouri		20,162		96	96
Nebraska		3,923	5,381	109	118
North Dakota	1,008	662	1,305	103	103
Ohio	39,650			113	113
South Dakota		2,719		102	102
Wisconsin		13,772		126	126
South					
Alabama	24,348		12,406	102 %	200%
Arkansas	12,046	11,592	10,147	95	100
Delaware		4,226	5,162	–	–
District of Columbia		1,672		97	97
Florida		76,510	56,507	99	121
Georgia		46,526		89	89
Kentucky	11,600	11,430		92	96
Louisiana	19,985	19,981		99	100
Maryland		23,674		99	99
Mississippi		16,972		94	94
North Carolina	29,354		29,354	110	110
Oklahoma		23,904		95	95
South Carolina		23,905	21,981	93	99
Tennessee	19,162	17,729		99	99
Texas[c]	154,780	150,099	156,758	96	97
Virginia	30,117			93	93
West Virginia		5,539	5,169	96	101
West					
Alaska[d]	2,909	2,561	2,605	109 %	112%
Arizona		27,948		99	99
California		150,536	72,957	101	191
Colorado		12,900	11,748	116	127
Hawaii		5,409	2,481	113	166
Idaho	3,990	3,791	3,194	98	123
Montana		1,870	896	125	191
Nevada[e]	10,548		8,312	93	110
New Mexico	6,108	6,108	5,966	93	95
Oregon		11,262	11,008	97	99
Utah		4,288	4,504	92	98
Washington	9,098	12,709	12,799	119	164
Wyoming	1,114	1,052	1,141	89	97

Data not available.
–Not calculated. (See Jurisdiction notes.)
[a]Population counts are based on the number of inmates held in facilities operated by the jurisdiction. Excludes inmates held in local jails, in other States, or in private facilities.
[b]Jurisdiction no longer reports capacity because of a law passed in 1995.
[c]Includes capacity of private and contract facilities and inmates housed in them.
[d]Excludes capacity of county facilities and inmates housed in them.
[e]Capacity counts for 2000 were used as an estimate for capacity for yearend 2001.

These measures were defined as follows:

Rated capacity is the number of beds or inmates assigned by a rating official to institutions within the jurisdiction.

Operational capacity is the number of inmates that can be accommodated, based on a facility's staff, existing programs, and services.

Design capacity is the number of inmates that planners or architects intended for the facility.

Of the 51 reporting jurisdictions, 28 supplied a rated capacity; 42, an operational capacity; and 33, a design capacity (table 10).

Nineteen jurisdictions provided only 1 measure or the same figure for each measure they reported. For the 28 jurisdictions with more than 1 reported type of capacity, estimates of population as a percent of capacity are based on the highest and lowest figures provided.

22 States and Federal system operating at or above highest capacity

Prisons generally require reserve capacity to operate efficiently. Dormitories and cells need to be maintained and repaired periodically, special housing is needed for protective custody and disciplinary cases, and space may be needed to cope with emergencies.

At yearend 2001, 26 States reported that they were operating at or below 99% of their highest capacity (table 10). Twenty-two States and the Federal prison system reported operating at 100% or more of their highest capacity. Rhode Island, which was operating at 86% of its highest capacity, reported the lowest percent of capacity occupied. California and Montana operating at 91% over their lowest reported capacity, had the highest percent of capacity occupied.

(q9)

By yearend 2001 the Federal prison system was operating at 31% over capacity, the same as the number reported in 2000. Overall, State prisons in 2001 were operating at between 1% over their highest capacity and 16% above their lowest capacity (table 11).

Table 11. State prison population as a percent of capacity, yearend 2001

	State prisons[a]
Highest capacity	1,140,413
Lowest capacity	961,017
Population as a percent of capacity[b]	
Highest	
1999	116
1998	114
2000	100
2001	101
Lowest	
1999	127
1998	124
2000	116
2001	116

Note: Data reflect the highest and lowest of the three capacities reported.
[a]Capacity figures were estimated for Connecticut in 2000 and 2001.
[b]Includes inmates sentenced to prison but held in local jails and inmates in private facilities (unless included in the reported capacity). See Jurisdiction notes.

At yearend 2001, 19,137 detainees were held by the Immigration and Naturalization Service

The U.S. Immigration and Naturalization Service (INS) reported 19,137 detainees on December 31, 2001, down from 19,528 at yearend 2000 (table 12). Though many of these detainees (10,376) were held in Federal and State prisons and local jails, 4,550 were in INS-operated facilities and 1,947 in private facilities under exclusive contract to the INS.

Following the events of September 11, 2001, the number of persons held under INS jurisdiction rose, peaking at 21,226 on September 25 (figure 2). Since that time, despite weekly fluctuations, the population has dropped steadily, reaching a low of 18,268 on December 22.

Among the 19,137 INS detainees for immigration violations at yearend 2001, 10,784 had been convicted of criminal offenses, and 1,589 had pending criminal cases. Detainees convicted of violent offenses constituted the largest group under INS jurisdiction (32.5%), followed by those convicted of drug offenses (32.3%), property offenses (14.5%), and public order offenses (11.0%).

Table 12. Number of detainees under the jurisdiction of the Immigration and Naturalization Service (INS), by type of facility, yearend 1995, 2000, and 2001

Facility type	Number of detainees 2001	2000	1995	Percent change 2000-01	Percent of all detainees 2001	1995
Total[a]	19,137	19,528	8,177	-2.0%	100%	100%
INS-operated facilities	4,550	4,795	3,776	-4.9	23.8	46.2
Private facilities under exclusive contract to INS	1,947	1,929	550	0.9	10.2	6.7
Federal Bureau of Prisons	1,276	1,484	1,263	-14.0	6.7	15.4
Other Federal facilities	182	172	181	5.8	0.9	2.2
Intergovernmental agreements	11,201	11,251	2,286	-0.4	58.5	28.0
State prisons	499	868	9	-42.5	2.6	0.1
Local jails	6,961	6,866	1,994	1.4	36.4	24.4
Other facilities	3,741	3,517	283	6.4	19.5	3.5

[a]Detail does not sum to total due to shared facility type for detainees in 2000 and 2001.

Daily counts of detainees under INS jurisdiction, August 1 to December 31, 2001

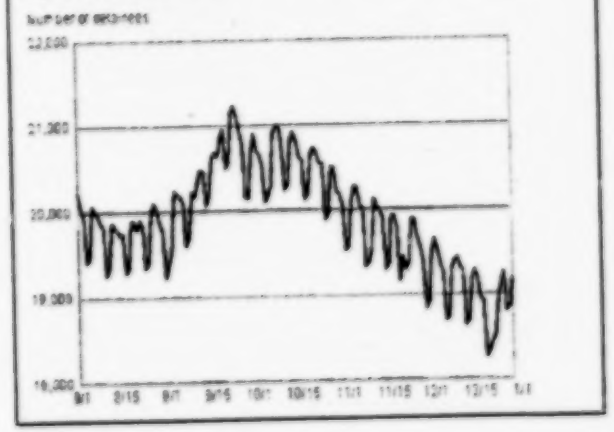


Figure 2

(q10)

At yearend 2001 U.S. military authorities held 2,438 prisoners in 59 facilities

About 82% of prisoners held by the Army, Air Force, Navy, and Marine Corps were convicted inmates; 18% were unconvicted persons whose cases had not been tried (table 13). Fifty-five percent of the prisoners (1,332) had sentences of 1 year or more. At yearend 2001 the Army's Disciplinary Barracks, Fort Leavenworth, Kansas, and five other local or regional Army facilities held the largest share (40%) of all inmates under military jurisdiction. The 11 Navy facilities held nearly 37% of all inmates; the 6 Marine Corps facilities held 18% of all inmates; and the 36 Air Force facilities held 5% of all inmates.

The operational capacity of the 59 military confinement facilities totaled 4,478 (not shown in a table). At yearend 2001 these facilities were operating at 54% of their operational capacity.

U.S. Territories held 15,852 inmates in 2001

The U.S. Territories and Commonwealths -- American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands -- reported 15,852 inmates under the jurisdiction of their prison systems at yearend 2001, a decrease of 1.7% since 2000 (table 14).

Prisoners with a sentence of more than 1 year totaled 11,910 (or three-quarters of the total territorial prison population). Since 1995 the number of sentenced prisoners held in U.S. Territories has grown 28%, compared to the 21% increase in the number of sentenced State prisoners.

Relative to the resident populations in the Territories, the rate of incarceration was 271 prisoners per 100,000 residents -- less than two-thirds of the combined rate of the 50 States and the District of Columbia. Of the 5 Territories, the U.S. Virgin Islands had the highest prison incarceration rate (339 inmates per 100,000 residents) followed by Puerto Rico (with 278).

Puerto Rico, the largest of the Territories, had the most sentenced prisoners (10,997 at yearend 2001), down from 11,075 in 2000. In 2001, 21 States had fewer sentenced inmates than Puerto Rico; 12 States had lower incarceration rates.

More black males than white males among State and Federal inmates at yearend 2001

	Percent of prisoners under State or Federal jurisdiction[a]	
	1990	2000
Total	100.0%	100.0%
White	35.4	35.1
Black	46.5	45.3
Hispanic	17.4	18.6
Other	2.5	2.0

[a]Based on inmates with sentences of more than 1 year.

At yearend 2001 black non-Hispanic inmates represented an estimated

Table 13. Prisoners under military jurisdiction, by branch of service, yearend 2000 and 2001

Branch of service	Total 2001	2000	Percent change 2000-01	Sentenced to more than 1 year 2001	2000	Percent change 2000-01
To which prisoners belonged						
Total	2,438	2,400	0.7%	1,332	1,346	-1.0%
Air Force	480	413	16.2	267	249	6.5
Army	864	796	1.5	600	596	0.6
Marine Corps	628	720	-14.0	356	390	-8.7
Navy	516	474	8.9	524	463	1.9
Coast Guard	8	14	-42.9	5	6	-50.0
Holding prisoners						
Total	2,438	2,400	0.7%	1,332	1,346	-1.0%
Air Force	134	100	33.6	14	11	27.3
Army	991	944	1.5	601	607	-1.1
Marine Corps	429	563	-24.0	77	134	-42.5
Navy	901	791	13.4	414	363	13.2

Table 14. Prisoners in custody of correctional authorities in the U.S. Territories, yearend 2000 and 2001

U.S. Territory	Total inmates 2001	2000	Percent change 2000-01	Sentenced to more than 1 year inmates 2001	2000	Percent change 2000-01	Incarceration rate 2001*
Total	15,852	16,130	-1.7%	11,910	11,916	-0.1%	271
American Samoa	175	140	10.7	138	114	9.6	182
Guam	587	614	-14.5	377	325	9.0	199
Commonwealth of the Northern Mariana Islands	102	97	5.2	72	51	41.2	99
Commonwealth of Puerto Rico	14,518	14,881	-1.2	10,997	11,075	-0.7	278
U.S. Virgin Islands	454	518	-4.6	418	353	18.1	339

--Not calculated.
*The number of prisoners with a sentence of more than 1 year per 100,000 persons in the resident population. Mid-year population estimates were provided by the U.S. Bureau of the Census International Data Base.

(q11)

46% of all inmates with sentences of more than 1 year, while white non-Hispanic inmates accounted for 36% and Hispanic inmates, 16%.

Although the total number of sentenced inmates rose sharply (up 82% between 1990 and 2001), there were only small changes in the racial and Hispanic composition of the inmate population. At yearend 2001, black males (585,800) outnumbered white males (449,200) and Hispanic males (199,700) among inmates with sentences of more than 1 year (table 15). More than 43% of all sentenced inmates were black males.

An estimated 10% of black males, age 25-29, in prison in 2001

When incarceration rates are estimated separately by age group, black males in their twenties and thirties are found to have high rates relative to other groups (table 16). Expressed in terms of percentages, 10.0% of black non-Hispanic males age 25 to 29 were in prison on December 31, 2001, compared to 2.9% of Hispanic males and about 1.2% of white males in the same age group. Although incarceration rates drop with age, the percentage of black males age 45 to 54 in prison in 2001 was still nearly 2.7% -- only slightly lower than the highest rate (2.9%) among Hispanic males (age 25 to 29) and more than twice the highest rate (1.3%) among white males (age 30 to 34).

Female incarceration rates, though substantially lower than male incarceration rates at every age, reveal similar racial and ethnic disparities. Black non-Hispanic females (with an incarceration rate of 199 per 100,000) were more than 3 times as likely as Hispanic females (61 per 100,000) and 5 times more likely than white non-Hispanic females (38 per 100,000) to be in prison on December 31, 2001. These differences among white, black, and Hispanic females were consistent across all age groups.

Table 15. Number of sentenced prisoners under State or Federal jurisdiction, by gender, race, Hispanic origin, and age, 2001

Number of sentenced prisoners

	Males				Females			
Age	Total[a]	White[b]	Black[b]	Hispanic	Total[a]	White[b]	Black[b]	Hispanic
Total	1,259,481	448,200	585,800	199,700	88,021	36,200	36,400	10,300
18-19	35,600	8,900	17,900	7,100	1,200	700	500	100
20-24	214,600	60,300	104,500	40,600	8,500	3,700	3,200	1,500
25-29	241,800	71,000	122,500	42,100	15,200	5,600	6,600	2,000
30-34	238,800	85,100	110,700	39,100	21,100	8,700	9,400	2,400
35-39	214,500	81,900	100,000	28,900	18,900	8,000	8,400	2,000
40-44	145,900	58,400	64,200	21,200	10,100	4,200	4,700	1,000
45-54	124,900	59,500	48,400	16,100	5,000	3,900	3,000	1,000
55 or older	38,400	28,900	10,800	4,100	1,800	1,300	500	100

Note: Based on custody counts from National Prisoners Statistics (NPS-1A) and updated from jurisdiction counts by gender at yearend. Estimates by age derived from the Survey of Inmates in State and Federal Correctional Facilities, 1997. Estimates were rounded to the nearest 100. Includes American Indians, Alaska Natives, Asians, Native Hawaiians, and other Pacific Islanders.
[a]Includes Hispanics.

Table 15. Number of sentenced prisoners under State or Federal jurisdiction per 100,000 residents, by gender, race, Hispanic origin, and age, 2001

Number of sentenced prisoners per 100,000 residents of each group

	Males				Females			
Age	Total[a]	White[b]	Black[b]	Hispanic	Total[a]	White[b]	Black[b]	Hispanic
Total	846	460	4,595	1,177	58	36	199	61
18-19	830	311	3,859	1,483	31	26	89	29
20-24	2,196	941	7,991	2,427	91	61	254	106
25-29	2,834	1,173	10,828	2,844	164	94	482	195
30-34	2,401	1,267	8,791	2,481	211	126	682	179
35-39	1,908	1,029	7,536	2,030	165	103	581	147
40-44	1,288	693	4,923	1,766	88	51	320	88
45-54	695	423	2,692	1,023	42	27	126	51
55 or older	149	110	512	260	6	5	18	7

Note: Based on estimates of the U.S. resident population on July 1, 2000 and adjusted for the 1990 census undercount.
[a]Includes American Indians, Alaska Natives, Asians, Native Hawaiians, and other Pacific Islanders.
[b]Excludes Hispanics.

Growth linked to increasing number of inmates in State prison for violent and drug offenses

Between 1990 and 2000 the distribution of the four major offense categories -- violent, property, drug, and public-order offenses -- changed slightly among State prisoners. The percent held for property and drug offenses dropped while the percent held for violent and public-order offenses rose.

Percent of sentenced State inmates

	1991	2000
Total	100%	100%
Violent	46	49
Property	26	20
Drug	22	21
Public-order	7	10

In absolute numbers, an estimated 589,100 inmates in State prison at yearend 2000 were held for violent offenses, 158,700 for robbery, 158,300 for murder, 118,800 for assault, and 113,900 for rape and other sexual assaults (table 17). In addition, 238,500 inmates were held for property offenses, 251,100 for drug offenses, and 124,600 for public-order offenses.

(q12)

Overall, the largest growth in State inmates between 1990 and 2000 was among violent offenders. During the decade the number of violent offenders grew 273,200, while the number of drug offenders grew 101,400 (table 18). As a percentage of the total growth, violent offenders accounted for 53% of the growth; drug offenders 20%; property offenders 12%; and public-order offenders 15%.

Sources of growth differ among men and women and among white, black, and Hispanic inmates

The increasing number of violent offenders accounted for 55% of the total growth among male inmates and 33% among female inmates. Drug offenders accounted for a larger portion of the total growth among female inmates (33%), compared to 19% among male inmates.

The increasing number of property offenders accounted for a slightly higher percent of the growth among female inmates (19%) than male inmates (12%).

Although the number of public-order offenders rose sharply, they accounted for only 15% of the total growth among male inmates and 18% of the growth among female inmates.

The sources of population growth also differed among white, black, and Hispanic prisoners. Overall, the increasing number of drug offenses accounted for 27% of the total growth among black inmates, 7% of the total growth among Hispanic inmates, and 15% of the growth among white inmates (table 19). Violent offenders accounted for the largest source of growth for all groups -- among white State inmates (49%), black inmates (52%), and Hispanic inmates (69%).

Table 17. Estimated number of sentenced prisoners under State jurisdiction, by offense, gender, race, and Hispanic origin, 2000

Offense	All	Male	Female	White	Black	Hispanic
Total	1,206,400	1,190,100	78,400	436,700	592,300	178,500
Violent offenses	589,100	565,100	24,000	212,400	273,400	97,100
Murder[a]	158,300	149,100	8,200	53,000	77,300	23,400
Manslaughter	17,300	15,400	1,900	6,500	6,600	2,900
Rape	30,800	30,400	300	15,400	12,700	2,300
Other sexual assault	43,100	43,000	100	44,500	20,700	13,400
Robbery	158,700	153,400	5,300	35,800	96,000	22,800
Assault	118,800	113,200	5,700	39,400	51,100	21,400
Other violent	28,100	24,400	1,700	11,800	9,400	3,900
Property offenses	238,500	219,300	19,200	109,600	98,900	28,400
Burglary	111,300	107,800	3,600	50,800	45,100	15,300
Larceny	45,700	39,900	5,800	17,900	21,100	5,800
Motor vehicle theft	16,800	16,100	700	7,700	7,100	2,700
Fraud	32,500	24,800	7,600	17,500	12,600	2,500
Other property	30,100[a]	28,800	1,500	14,800	10,900	3,600
Drug offenses	251,100	226,400	24,700	58,200	145,300	42,300
Public-order offenses[b]	124,600	116,400	8,200	56,600	44,900	19,000
Other/unspecified	3,200	2,900	300	700	1,400	700

Note: Data are for inmates with a sentence of more than 1 year under the jurisdiction of State correctional authorities. The number of inmates by offense were estimated using the 1997 Survey of Inmates in State Correctional Facilities and rounded to the nearest 100.
[a]Includes nonnegligent manslaughter, excludes weapons, drunk driving, court offenses, commercialized vice, morals and decency charges, liquor law violations, and other public-order offenses.
[b]Includes juvenile offenses and unspecified felonies.

Table 18. Partitioning by gender and offense the growth of the sentenced prison population under State jurisdiction, 1990-2000

	All prisoners		Male prisoners		Female prisoners	
Offense	Increase 1990-2000	Percent of total	Increase 1990-2000	Percent of total	Increase 1990-2000	Percent of total
Total	516,900	100%	477,300	100%	39,700	100%
Violent	273,200	53	260,300	55	12,900	33
Property	60,500	12	53,000	11	7,500	19
Drug	101,400	20	89,500	19	12,900	33
Public-order	79,800	15	72,500	15	6,800	17

Table 19. Partitioning by race, Hispanic origin, and offense the growth of the sentenced prison population under State jurisdiction, 1990-2000

	White prisoners		Black prisoners		Hispanic prisoners	
Offense	Increase 1990-2000	Percent of total	Increase 1990-2000	Percent of total	Increase 1990-2000	Percent of total
Total	190,350	100%	247,330	100%	63,200	100%
Violent	94,900	49	127,900	52	43,400	69
Property	33,400	17	25,900	10	4,200	7
Drug	25,500	13	68,600	27	4,600	7
Public-order	36,900	19	23,900	10	10,700	17

(q13)

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Table 20. Number of sentenced inmates in Federal prisons, by most serious offense, 1990, 1995, and 2000

Offense	Number of sentenced inmates in Federal prisons 1990	1995	2000	Percent change, 1990-2000	Percent of total growth, 1990-2000
Total	58,988	69,101	129,329	100.9%	100.0%
Violent offenses	9,557	11,331	12,973	35.7%	4.7%
Homicide*	1,283	966	1,134	-11.6	-0.2
Robbery	5,159	6,341	9,450	83.2	6.9
Other violent	3,186	4,014	2,389	-25.0	-1.1
Property offenses	7,933	7,934	9,649	21.6%	1.2%
Burglary	442	164	280	-36.7	-0.2
Fraud	5,113	5,629	7,497	46.6	3.3
Other property	2,280	1,751	2,072	-12.9	-0.4
Drug offenses	30,470	51,727	72,339	140.9%	59.3%
Public-order offenses	8,595	15,762	31,365	271.1%	30.2%
Immigration	1,728	3,612	13,676	691.4	16.6
Weapons	3,073	7,519	10,652	246.6	10.5
Other public-order	3,794	4,631	7,527	98.9	5.2
Other/unknown†	442	1,757	1,391	185.7%	1.1%

Note: All data are from the BJS Federal Justice database. Data for 1990 and 1995 are for December 31. Data for 2000 are for September 30. Data are based on all sentenced inmates, regardless of sentence length.

*Includes murder, nonnegligent manslaughter, and negligent manslaughter. †Includes offenses not classifiable.

Changing Federal prison population related to drugs, weapons, and immigration violations

Prisoners sentenced for drug offenses constitute the largest group of Federal inmates (57%) in 2000, up from 53% in 1990 (table 20). On September 30, 2000, the date of the latest available data in the Federal Justice Statistics Program, Federal prisons held 73,389 sentenced drug offenders, compared to 30,470 at yearend 1990.

Between 1990 and 2000, the number of Federal inmates held for immigration offenses increased 691%, and the number held for weapons offenses increased 247%. The number of immigration offenders rose from 1,728 in 1990 to 13,676 in 2000; weapons offenders rose from 3,073 to 10,652. By September 30, 2000, weapons offenders represented 8.2% of Federal inmates and immigration violators 10.6%. Although the number of robbers showed an increase of 83% between 1990 and 2000, the increase was offset by a decline of nearly 9% among offenders held for homicide and 24% among other violent offenders (such as inmates held for assault and sex offenses).

Overall, the percentage of violent Federal inmates declined from 17% to 10%. While the number of offenders in each major offense category increased, the number incarcerated for a drug offense accounted for the largest percentage of the total growth (59%), followed by public-order offenders (32%).

Methodology

National Prisoner Statistics

The Bureau of Justice Statistics (BJS), with the U.S. Census Bureau as its collection agent, obtains yearend and midyear counts of prisoners from departments of correction in each of the 50 States, the District of Columbia, and the Federal Bureau of Prisons.

In an effort to collect comparable data from all jurisdictions, National Prisoner Statistics (NPS) distinguishes prisoners in custody from those under jurisdiction. To have custody of a prisoner, a State must hold that person in one of its facilities. To have jurisdiction means that a State has legal authority over the prisoner. Prisoners under a State's jurisdiction may be in the custody of a local jail, another State's prison, or other correctional facility. Some States are unable to provide both custody and jurisdiction counts. (See *NPS jurisdiction notes*.)

Excluded from NPS counts are persons confined in locally administered confinement facilities who are under the jurisdiction of local authorities. NPS counts include all inmates in State-operated facilities in Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont, which have combined jail-prison systems.

Military Corrections Statistics

BJS obtains yearend counts of prisoners in the custody of U.S. military authorities from the Department of Defense Corrections Council. In 1994 the council, comprised of representatives from each branch of military service, adopted a standardized report (DD Form 2720) with a common set of items and definitions. This report provides information on persons held in U.S. military confinement facilities inside and outside the continental United States, by branch of service, sex, race, Hispanic origin, conviction status, sentence length, and offense. It also includes data on the number of facilities, and their design and rated capacities.

NPS jurisdiction notes

Alaska – Prisons and jails form one integrated system. All NPS data include jail and prison populations. Counts exclude individuals in electronic and special monitoring programs.

Arizona – Population counts are based on custody data. Counts exclude 332 sentenced males and 27 sentenced females housed in local jails who were awaiting transfer to the DOC.

The definition of operational capacity has changed to include temporary beds and double bunks used in situations of crowding.

Arkansas – During the year, the DOC took control of two facilities previously managed by a private company.

California – Population counts include felons and civil addicts who are temporarily absent, such as in court, jail or hospital.

Colorado – Population counts include 266 male and 7 female inmates in the Youthful Offender System and 113 male and 16 female inmates housed in local jails awaiting transfer to the Department of Corrections.

Capacity figures exclude 4 privately run facilities under contract with the Department of Corrections.

Connecticut – Prisons and jails form one integrated system. All NPS data include jail and prison populations. Counts include inmates in halfway houses.

Legislation in 1995 abolished the capacity law so that prisons no longer have a rated or operational capacity. Design capacity is recorded separately in each facility.

Delaware – Prisons and jails form one integrated system. All NPS data include jail and prison populations.

Capacity counts include Department of Correction hallway houses.

District of Columbia – Prisons and jails form one integrated system. All NPS data include jail and prison populations. Counts exclude inmates held in the Federal system as a result of the transfer of responsibility for sentenced felons under the 1997 Revitalization Act.

Federal – Custody counts include inmates housed in privately operated secure facilities under contract with BOP or with State or local government that has an intergovernmental agreement. Custody counts exclude offenders housed under home confinement.

Rated capacity excludes contract beds.

Florida – Population counts are based on custody data, including inmates in privately operated facilities.

Georgia – Population counts are based on custody data, including inmates in privately operated facilities.

Facilities in Georgia are not given rated or design capacities.

Hawaii – Prisons and jails form one integrated system. All NPS data include jail and prison populations.

Idaho – Rated capacity is defined as 100% of the maximum capacity; operational capacity as 98% of the maximum (except in one facility which is 100%).

Illinois – Population counts are based on jurisdiction data. Counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year.

Iowa – Population counts are based on custody data. Counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year or less.

Kansas – Population counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year or less.

Louisiana – Counts are as of December 26, 2001. Operational capacity is based on day-to-day operations. Rated and operational capacities include contractual work release facilities.

Population counts include 14,826 males and 1,224 females housed in local jails as a result of a partnership with the Louisiana Sheriffs' Association and local authorities.

Maryland – Design capacity is no longer reported because of renovations and other changes. Operational capacity was estimated by applying a percentage to the population count on December 31, 2001.

Massachusetts – By law, offenders may be sentenced to terms of up to 2½ years in locally operated jails. Such offenders are included in counts and rates for local jails. About 6,200 inmates with sentences of more than 1 year were held in local jails in 2000.

Counts include 420 inmates housed in local jails and 86 inmates held in another State due to crowding in State prison facilities.

Michigan – Jurisdiction counts exclude 237 inmates held in local jails.

Operational capacity includes institution and camp net capacities and populations in community programs.

Mississippi – Operation and design capacities include private prison capacities and exclude local county jails and county regional facilities.

Missouri – Design capacities are not available for older prisons. Operational capacity is defined as the number of available beds including those temporarily off-line.

Montana – Counts include 251 inmates under intensive supervision in the community and 26 inmates housed in local jails awaiting transfer to a State facility.

Capacity figures exclude 3 county operated regional prisons (an estimated 610 beds) and a State operated boot camp (60 beds).

Nebraska – Operational capacity is defined as stress capacity (or 125% of design capacity), which is ordered by the governor and set by the Department of Corrections.

Nevada – Rated capacity is defined as emergency capacity. Design capacity is defined as one bed per cell. Capacity figures include 680 beds in a private facility.

New Jersey – Population counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year.

Rated and operational capacity figures are not maintained.

New Mexico – Operational capacity includes the maximum number of contracted beds in private facilities.

North Carolina – Capacity figures refer to standard operating capacity as of June 28, 2002, based on single occupancy per cell and 50 square feet per inmate in multiple occupancy units.

North Dakota – Capacity figures include a new facility opened in 1998 and double bunking in the State Penitentiary.

Ohio – Population counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year or less.

Oklahoma – Population counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year.

Capacity figures include private prisons and contract jails.

Oregon – Under a new law, inmates with under a 1 year maximum sentence remain under the control of local counties.

Rated and design capacities are not recognized.

Pennsylvania – Custody counts include inmates in contracted group homes.

In April 2001 the definition of rated capacity was changed, based on the "Multiple Occupancy Strategy" which allows for housing more than 1 inmate per cell/dormitory in 80% of the housing units and 1 inmate per cell in 20% of units.

Rhode Island – Prisons and jails form one integrated system. All NPS data include jail and prison populations.

South Carolina – Population counts include unsentenced inmates on Youthful Offender Act observation status, of which there were none on December 31, 2001.

South Dakota – Operational capacity is planned capacity. Rated and design capacities are not recognized.

Tennessee – Population counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year.

Texas – Jurisdiction counts include inmates serving time in a pre-parole transfer (PPT) or intermediary sanctions facility (ISF), substance abuse felony punishment facility (SAFPF), temporary releases to

(q14)

(q15)

24

counties, and paper ready inmates in local jails.

Capacity figures include public, privately operated and county contracted facilities that are state funded. Non-contracted county jail beds are excluded.

Utah – Custody counts exclude inmates held in county jails.

Vermont – Prisons and jails form one integrated system. All NPS data include jail and prison populations. Population counts are jurisdiction counts that include inmates housed in other States but exclude inmates on furlough or intermediate sanctions.

Virginia – Population counts are for December 29, 2001.

Rated capacity is the DOC count of beds, which takes into account the number of inmates that can be accommodated based on staff, programming, services and design.

Washington – A recently revised law allows increasing numbers of inmates with sentences of less than 1 year to be housed in prison.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Lawrence A. Greenfeld is the acting director.

BJS Bulletins present the first release of findings from permanent data collection programs such as the National Prisoner Statistics.

Paige M. Harrison and Allen J. Beck wrote this report. Jennifer C. Karberg provided statistical assistance and verification. Tom Hester edited the report. Jayne Robinson administered final production.

Data collection and processing for the NPS program were carried out by Nicole D. Simpson under the supervision of Marilyn M. Monahan, Demographic Surveys Division, U.S. Census Bureau.

Christopher J. Mumola collected and processed data on prisoners in the U.S. Territories, in U.S. military facilities, and in facilities operated by or for the U.S. Immigration and Naturalization Service.

July 2002, NCJ 195189

Wisconsin – Jurisdiction counts include 398 temporary probation or parole placements, 68 persons on escape status, and 14 persons in home residence under the Intensive Sanctions Program.

Operational capacity excludes contracted local jails, Federal, other State, and private facilities.

This report in portable document format and in ASCII, its tables, and related statistical data are available at the BJS World Wide Web internet site:
<http://www.ojp.usdoj.gov/bjs/>

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

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(q16)

APPENDIX R

STATE OF COLORADO

COLORADO DEPARTMENT OF CORRECTIONS

CORRECTIONAL SERVICES
Office of Offender Management
[illegible] South Circle Drive
Colorado Springs, CO 80910
Phone: (719) 226-4[illegible]
Fax: (719) 226-4[illegible]

1876

[illegible]
Acting Assistant

[illegible]
Executive Director

AFFIDAVIT OF LOU ARCHULETA

Lou Archuleta, being first duly sworn under oath, deposes and attests under penalty of perjury as follows:

1. I am the Acting Assistant Director of Correctional Services, Offender Management for the Colorado Department of Corrections ("CDOC").

2. My responsibilities include overseeing the administration of Offender Services, which includes court services, inmate classification, time computation, case management, inmate discipline, and other areas of inmate management. In this capacity I am knowledgeable about the paperwork and statistical compilations prepared by CDOC officials with respect to inmates who have violated prison disciplinary rules.

3. Whenever an inmate is convicted of a drug-related offense in violation of the CDOC Code of Penal Discipline, administrative staff at each correctional facility retain copies of all documentation generated in connection with the disciplinary charge, including the Notice of Charges, the Disposition of Charges, and the Inmate Appeal Form. These staff also serve as custodians of the audiotapes of the prison disciplinary proceedings.

4. Once an inmate receives a drug-related disciplinary conviction, his or her visitation is suspended under CDOC Administrative Regulation 300-01.

5. In the scope and course of my responsibilities as Assistant Acting Director of Correctional Services, I have been made aware of more than 125 inmates who have lost visitation privileges during the past three years after receiving three or more disciplinary convictions for drug-related offenses while incarcerated. More than 160 additional inmates have lost visitation privileges after receiving one or two disciplinary convictions for drug-related offenses.

(r1)

BEST AVAILABLE COPY

6. Inmate Guadalupe Robledo lost visitation privileges after receiving two drug-related disciplinary convictions. While his visitation was suspended, he died of a drug overdose in his cell. See Attachments 1 (Dispositions of Charges) & 2 (Death Certificate).

Further, affiant sayeth naught.

LOU ARCHULETA

Subscribed and sworn before me in the County of El Paso, State of Colorado, this 3rd day of January, 2003.

My Commission Expires 03-16-05

(r2)

Attachment 1

DEPARTMENT OF CORRECTIONS

DC Form 150-1B (Revised 9/97)

DISPOSITION OF CHARGE(S)

Formal Hearing ☒
Informal Conference ☐

FACILITY: Fremont Correctional Facility (FCF)

CASE NO. 001286

OFFENDER NAME	ROBLEDO, GUADALUPE	DOC NUMBER	89466
CURRENT HOUSING UNIT	CH 8 (SEG)	CURRENT SECURITY DESIGNATION	CLOSE

FINDINGS OF FACT: *(List plus, relevance of evidence introduced by facility to support charge(s) including the general substance of any confidential testimony and/or evidence.)*

CHARGE: II-11 Possession of Syringe or Drug Paraphernalia
PLEA: Not Guilty
FINDING: Guilty
SUPPORTING FACTS: Inmate Robledo and another inmate were in Robledo's cell with a third inmate ("Lookout") standing in the doorway - Suspicious behavior led to Officer Jennifer Binder questioning the inmates, upon entry, she found a syringe. Robledo is responsible for all items in his cell unless proven otherwise. Based on the evidence presented, it is more likely than not the syringe was in the cell the entire time and inmate Mercado was a lookout. Robledo was in possession of a syringe.

CHARGE: II-15 Interference with Search
PLEA: Not Guilty
FINDING: Guilty
SUPPORTING FACTS: When instructed to leave his cell so Officer Binder could search the cell (due to suspicious behavior), inmate Robledo along with another inmate, obstructed her entrance into the cell while a third inmate entered the cell.

SUPPORTING EVIDENCE:
Written Statement by: Jennifer Binder, Officer
Presentation by: Rod Buxman, Captain
DISCIPLINARY OFFICER: Rod Buxman, Captain
INMATE REPRESENTATIVE: Frederick Blair, 00787
WITNESS(S): Larry Mercado, 55626 - Allowed
Ernest Nelez, 80459 - Offer of Proof

SUMMARY OF PENALTIES:
SANCTION(S): II-11 16 days punitive segregation (6/12/00 to 6/28/00) Credit for time served
II-15 16 days punitive segregation (concurrent to II-11)
REASON(S): No COPD conviction last year; the seriousness of possessing a syringe with regard to facility security, staff and inmate safety with regard to disease transmission

S/ C. Tapp 6-23-00
Chairperson Charles Tapp Date

DATE OF HEARING	6/22/00	TIME OF HEARING	2:50 A.M.	LOCATION OF HEARING	FCF HEARING ROOM
COMMITTEE MEMBERS PRESENT					

WARDEN/DIRECTOR REVIEW (Not required for informal)

☒ AFFIRM ☐ MODIFY ☐ REVERSE

COMMENTS:

S/ 6-23-00
Administrative Head or Designee Date

Offender Acknowledgment: I acknowledge receipt of a copy of this Disposition of Charge.

Name ROBLEDO, GUADALUPE Signature Date

DISTRIBUTION: WHITE-Department File CANARY-Working File PINK-Warden/Director GOLD-Offender

(r3)

DEPARTMENT OF CORRECTIONS

DISPOSITION OF CHARGE(S)

DC Form 150-10 (Rev. 9/90)

#15 E-10

Formal Hearing ☒
Informal Conference ☐

FACILITY: Fremont Correctional Facility (FCF) CASE NO. 00/1268

OFFENDER NAME	ROBLEDO, GUADALUPE	DOC NUMBER	80466
CURRENT HOUSING UNIT	CH 8	CURRENT SECURITY DESIGNATION	CLOSE

FINDINGS OF FACT: *(List plea, substance of evidence introduced by facility to support charge(s) including the general substance of any confidential testimony and/or evidence.)*

CHARGE: II-8 Possession or Use of Dangerous Drugs
PLEA: Not Guilty
FINDING: Guilty

SUPPORTING FACTS: Per positive test results for cocaine on a Pharm Chem patch test, obtained from inmate Robledo, he used dangerous drugs

SUPPORTING EVIDENCE:
Written Statement by: Sean Foster, Captain
Presentation by: Bob Capp, Lieutenant
Testimony by: Randy Vocke, Sergeant

DISCIPLINARY OFFICER: Bob Capp, Lieutenant
INMATE REPRESENTATIVE: George Berry, 99800
WITNESS(S): Randy Vocke, Sergeant - Allowed

SUMMARY OF PENALTIES:
SANCTION(S): 20 days punitive segregation (next available segregation bed)

REASON(S): 2 CDPD convictions in the last 30 days (1 for possession of dangerous drugs)

S/ Charles Tapps 7-16-00
Chairperson Charles Tapps Date

DATE OF HEARING	7/19/00	TIME OF HEARING	9:30 A.M.	LOCATION OF HEARING	FCF CH 5 HEARING ROOM

COMMITTEE MEMBERS PRESENT

WARDEN/DIRECTOR REVIEW (Not required for Informal)

☒ AFFIRM ☐ MODIFY ☐ REVERSE

COMMENTS

S/ 7-22-00
Administrative Head or Designee Date

Offender Acknowledgment: I acknowledge receipt of a copy of this Disposition of Charge.

Name Guadalupe, Robledo Signature [signature] 7-24-00
Date

WHITE-DISTRIBUTION YELLOW-Department File CANARY-Working File PINK-Warden/Director GOLD-Offender

(r4)

Attachment 2

STATE OF COLORADO

CERTIFICATE OF DEATH

STATE FILE NUMBER

1. DECEDENT'S NAME (First, Middle, Last): Guadalupe ROBLEDO
2. SEX: Male
3. DATE OF DEATH: November 8, 2000
4. SOCIAL SECURITY NUMBER: 579-88-8343
5a. AGE - Last Birthday: 26
5b. UNDER 1 YEAR: Months / Days
5c. UNDER 1 DAY: Hours / Minutes
6. DATE OF BIRTH: June 26, 1974
7. BIRTHPLACE: Denver, CO
8. WAS DECEDENT EVER IN U.S. ARMED FORCES? ☐ Yes ☒ No
9a. PLACE OF DEATH: ☐ Inpatient ☒ ER/Outpatient ☐ DOA ☐ Other
9b. FACILITY: St. Thomas More Hospital
9c. CITY, TOWN, OR LOCATION OF DEATH: Canon City
9d. COUNTY OF DEATH: Fremont
10a. DECEDENT'S USUAL OCCUPATION: Inmate
10b. KIND OF BUSINESS/INDUSTRY: Dept. of Corrections
11. MARITAL STATUS: Never Married
12. SPOUSE: (If wife, give maiden name)
13a. RESIDENCE - STATE: COLORADO
13b. COUNTY: Fremont
13c. CITY, TOWN, OR LOCATION: Canon City
13d. WITHIN CITY LIMITS? ☐ Yes ☒ No
13e. ZIP CODE: 81215-0999
13f. STREET AND NUMBER: Fremont Correctional Facility-PO Box 999
14. WAS DECEDENT OF HISPANIC ORIGIN? ☐ No ☐ Yes - Specify Cuban, Mexican, Puerto Rican, etc.
15. RACE - American Indian, Black, White, etc. (Specify): White
16. DECEDENT'S EDUCATION (Specify only highest grade completed) (Elementary or Secondary) (If Grade 12) College (13 through 16 or 17+): 12
17. FATHER'S NAME (First, Middle, Last): Ramon Robledo
18. MOTHER'S NAME (First, Middle, Last/Maiden Name): Maria Estrada
19. INFORMANT'S NAME and relationship to deceased: Rogelio Robledo - Brother
20a. METHOD OF DISPOSITION: ☐ Burial ☐ Cremation ☐ Removal from state ☐ Donation ☐ Other
20b. PLACE OF DISPOSITION: Mt. Olivet Cemetery
20c. LOCATION - City or Town, State: Wheat Ridge, CO
21a. SIGNATURE OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH: Paula Cappelano
21b. NAME AND ADDRESS OF FACILITY: Cappelano's Family Services 3407 North El Paso Street, Colorado Springs CO 80907
22a. REGISTRAR'S SIGNATURE
22b. DATE FILED: 11-28-00
23. TIME OF DEATH: 10:30 PM
24. DATE PRONOUNCED DEAD: November 6, 2000
25. TIME: 2235
26. WAS CORONER NOTIFIED? Yes

TO BE COMPLETED ONLY BY CERTIFYING PHYSICIAN

27. To the best of my knowledge, death occurred at the time, date and place, and due to the cause(s) and manner as stated.
Signature
28. DATE SIGNED (Month, Day, Year)
29. NAME, TITLE AND MAILING ADDRESS OF CERTIFIER (Type/Print)

TO BE COMPLETED BY CORONER

27. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place, and due to the cause(s) and manner as stated.
Signature [signature]
28. DATE SIGNED (Month, Day, Year): November 28, 2000
29. NAME, TITLE AND MAILING ADDRESS OF CERTIFIER (Type/Print): Dorothy Tomlinson, MD Coroner 915 Macon, Canon City, CO 81212

30. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type/Print)

31. MANNER OF DEATH: ☐ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending Investigation ☐ Could not be determined
32a. DATE OF INJURY (Month, Day, Year): 11-06-00
32b. TIME OF INJURY: 9ish: 2000
32c. INJURY AT WORK? ☐ Yes ☒ No
32d. DESCRIBE HOW INJURY occurred: Probable Accidental Drug Overdose
32e. PLACE OF INJURY (At home, farm, street, factory, office building, etc.): prison
32f. LOCATION (Street and Number or Rural Route Number, City, County, State): 57500 E. Hwy 50, Canon City, CO

33. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), and (c). Do not enter modes of dying, e.g., Cardiac or Respiratory Arrest, shock, Hemorrhage.)
PART I
(a) Cardiorespiratory Failure — Interval between onset and death: few minutes
CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE (a), STATING THE UNDERLYING CAUSE LAST (b)
(b) Heroin Overdose — Interval between onset and death: minutes
(c)
PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not related to cause in PART I (a)

34. AUTOPSY (Yes or No): Yes
35. WERE BRAIN(S) retained for subsequent disposition? Yes

ADRS-18 1-89 (Rev. 1-91)

(r5)

APPENDIX S

DISTRICT COURT, FREMONT COUNTY, COLORADO
Case No. 00CV 313 DIV2

COMPLAINT PURSUANT TO RULE 106 (a) (4) (a) (2) AND, C.R.C.P. Pursuant to Rule (57)

Guadalupe Robledo,
Plaintiff, pro se,

V.

Gary Neet Warden of the Fremont Correctional Facility;
Lt. Charles Tappe Hearing Board Officer Fremont Correctional Facility,
Gloria Masterson Administrative Head, Fremont Correctional Facility, E t al.,

Defendants.

Plaintiff Guadalupe Robledo, pro se, submits the following complaint against the defendant.

INTRODUCTORY ALLEGATIONS

1. This Court has jurisdiction pursuant to Article VI, Section 9 of the Colorado Constitution and rule 106 (b), C.R.C.P.

2. Venue is proper in Fremont County where defendants are alleged to have failed to perform official duties in whole or in part as they relate to Plaintiff.

3. Plaintiff is incarcerated at the Fremont Correctional Facility, located in Fremont County, Canon City, Colorado.

4. Defendant Gary Neet is warden at the Plaintiff's facility and he reviews the final Appeals of inmate disciplinary hearing convictions, including that of the Plaintiff.

5. Defendant is deputy warden at the Plaintiff's facility and he makes initial review disposition on disciplinary hearing results, including that of the Plaintiff.

6. Plaintiff was charged in disciplinary Case Numbers 001286, 001368, with a violation of the Code Of Penal Discipline (".C.O.P.D."), to wit, a Class II offences of Possession of a Syringe, and Possession of Dangerous Drugs.

7. Plaintiff's conviction was affirmed on routine disposition by and on Appeals by Gloria Masterson, Administrative Head on 8-3 00 respectively.

8. Plaintiff completed all administrative remedies available to him on August 8, 2000.

9. Defendants have a duty to not exceed their jurisdiction or abuse their discretion as it relates to disciplinary hearings under the COPD.

10. There is no other plain, speedy and adequate remedy available in the ordinary course of law to Plaintiff.

FIRST CLAIM FOR RELIEF
ABUSE OF DISCRETION

11. That the Defendant's abused their discretion by acquitting inmate Ernie Nehaez 80459, and not the plaintiff, for the same identical charges, again due process was not followed as indicated in the above information.

SECOND CLAIM FOR RELIEF

12. The allegations of paragraphs 1 through 10 are incorporated herein by reference. The Defendant's failed to follow their normal course of action in applying the COPD charges by failing to preserve the attached evidentiary documentation to the **Notice of Charges**.

13. Any and all hearings under the COPD are to be in compliance with the due process requirements of Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).

14. The actions of the defendants were willful and wanton with the purpose of finding guilt Plaintiff where quilt did not lie, which action was an abuse of discretion of defendants.

WHEREFORE, Plaintiff prays that this court issues an order commanding the Defendants to dismiss the original findings of guilty to the COPD offence and to amend, and/or cause to have amended, all the records within the Colorado Department of Corrections to reflect a finding of not guilty to the COPD offence and for such other relief as this court deems proper.

Dated: Sept 26 2000

Respectfully submitted,

Guadalupe Robledo
Plaintiff Guadalupe Robledo
Register # 80466
Box 999
Canon City, CO 81215

VERIFICATION

I verify that I have read the above Complaint Pursuant to Rule 106 (a) (4) and (a) (2), C.R.C.P, and that the above information and allegations set forth therein are true and correct to the best of my personal knowledge and belief.

_____

Subscribed and acknowledged to before me
this___day of _____, 2000.

_____
Notary Public

My commission expires:_____

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APPENDIX T

GEORGE A. KOKUS*

*admitted to Florida and Colorado Bars

LAW OFFICES
GEORGE A. KOKUS
ATTORNEY AND COUNSELOR AT LAW

6000 E. Evans Ave., Suite 1-020
Denver, Colorado 80222

Phone: (303) 639-6100
Fax: (303) 639-6017

FLORIDA OFFICE
1521 Southwest LeJeune Road
P.O. Box 14-1156
Coral Gables, Florida 33114-1156

Phone: (305) 443-7318
Fax: (305) 444-9119

May 4, 2001

RECEIVED
MAY 07 2001
OFFICE OF THE
ATTORNEY GENERAL

Ken Salazar, Attorney General
State of Colorado
1525 Sherman Street - 5th Floor
Denver, Colorado 80203

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: Guadalupe Robledo, DOC #80486
Date of Death: November 6, 2000
Claimants: Maria Robledo - mother of the decedent
Rogelio Robledo, Ramon Robledo &
Gustavo Robledo - brothers of the decedent

NOTICE OF CLAIM AGAINST THE DEPARTMENT OF CORRECTIONS AND THE STATE OF COLORADO

Dear Attorney General Salazar:

This letter is sent pursuant to C.R.S. § 24-10-109 as a notice of anticipated claim against the Department of Corrections and the State of Colorado. These claims arose around the facts and circumstances which resulted in the death of Guadalupe Robledo, an inmate in the custody of the Department of Corrections, inmate number 80486. The claimants are his mother, Maria Robledo, and his three brothers, Rogelio, Ramon, and Gustavo Robledo.

I have been retained to represent Guadalupe's mother and three brothers who have been injured and adversely effected by what we consider to be the unnecessary death of Guadalupe Robledo while in the custody of the Department of Corrections.

The factual basis of this claim arises out of the death of Guadalupe Robledo while he was in the custody of the Department of Corrections at the Fremont Correctional Facility. He apparently lost consciousness on November 6, 2000, as the result of a drug overdose. According to the reports received by the undersigned attorney from Assistant Attorney General Joseph P. Sanchez, the following information was obtained.

That at approximately 9:25 p.m. on November 6, 2000, Gary Ortega, the inmate who shared the same cell with Guadalupe Robledo, could not wake Mr. Robledo. That CO John Marquez and CO Scott went to Mr. Robledo's cell and found him unconscious. Despite what the correction officers found, it took 30 minutes for Mr. Robledo to arrive at the Medical Care Unit and for a preliminary medical examination to be done. 14 minutes after arriving at the Medical Care Unit he was transferred, via ambulance and under guard, to St. Thomas More Hospital Emergency Room where he arrived 10 minutes later at 10:19 p.m. and was pronounced dead by the physicians at St. Thomas More Hospital at 10:35 p.m.

We believe that based upon the information which is presently known to the family and to their undersigned attorney, that the Department of Corrections failed to properly react to an emergency medical condition which was life threatening. That the slow reaction time in obtaining even basic medical assistance substantially contributed to Mr. Robledo's death. Additionally, the Department of Corrections was negligent in failing to protect their inmates, especially the decedent Guadalupe Robledo, from injury and were negligent in allowing what appears to be almost free access to controlled substances in what is supposed to be a medium security facility which could not have happened without either the active participation or tacit approval of employees of the Department of Corrections. It is apparent that at Fremont Correctional Facility a prisoner or guard/prisoner drug network exists. Attached as Exhibit A is a list of all public employees who may have information concerning this case.

The nature and extent of the damages which Mr. Robledo's mother has suffered include; grief, loss of her son's companionship and the emotional distress of losing her son. Mr. Robledo's bothers also suffered loss of companionship and emotional distress at the loss of their bother as well as the payment of approximately $6,600.00 in funeral and burial expense.

The amount of monetary damages which are requested pursuant to the wrongful death statute is $250,000.00 in non-economic loss suffered by Guadalupe Robledo's mother, Maria. Net economic loss from any economic support she may have received once Guadalupe was released from prison is unknown at this time. The brother's claims are for their grief and emotional distress as well as the cost of the funeral and burial expenses as stated above. My clients understand that such demands for damages are limited by the laws of the State of Colorado, the Wrongful Death Act, and the limitations placed upon the waiver of sovereign immunity by the State of Colorado.

The names and address of all of the claimants are:

Maria Robledo
11130 Clermont Way
Thornton, CO 80233

Ramon Robledo
11130 Clermont Way
Thornton, CO 80233

Rogelio Robledo
11130 Clermont Way
Thornton, CO 80233

Gustavo Robledo
6740 E. 121st Dr.
Brighton, CO 80602

The name and address of the attorney is:

George A. Kokus, Esq.
6000 E. Evans Avenue, Suite 1-020
Denver, Colorado 80222

I request that the Deputy Attorney General assigned to this case contact me as soon as possible to discuss these claims. Thank you for your cooperation.

Very truly yours,

George A. Kokus

GAK:ldc
Enclosure

cc: Maria Robledo
Rogelio Robledo
Ramon Robledo
Gustavo Robledo

EXHIBIT A

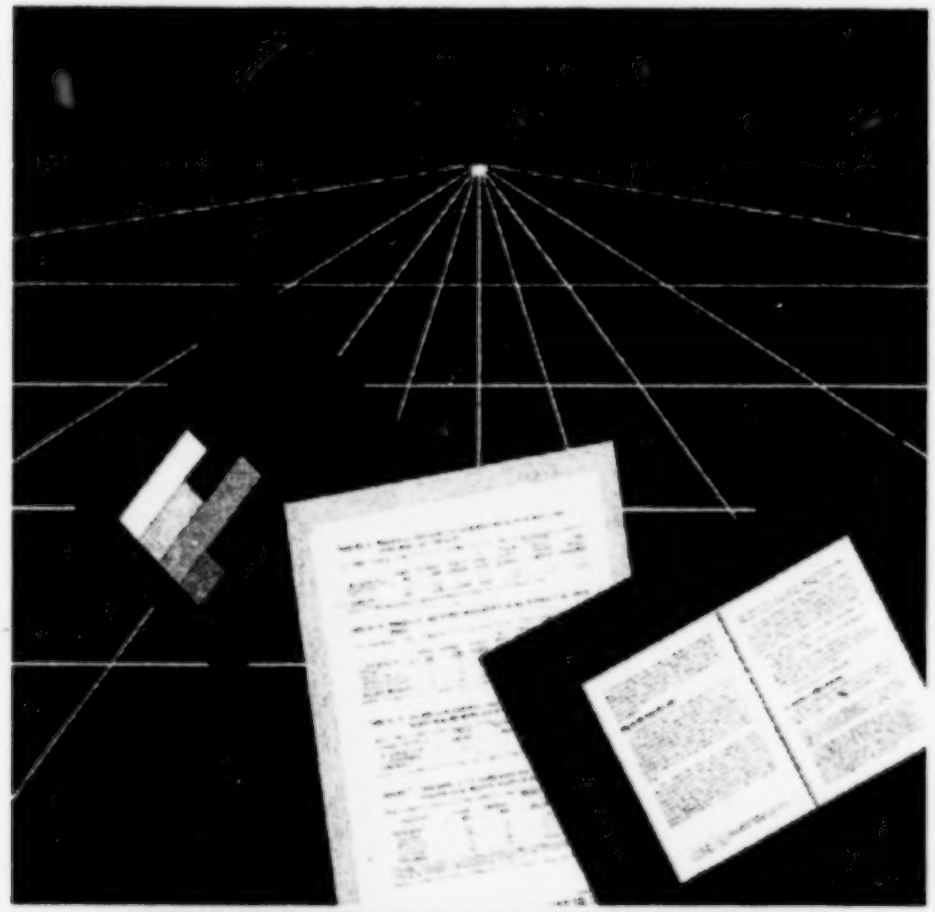
Fremont Correctional Facility Staff who may have information regarding this case:

Lt. Jesse Medina
CSSO I John Marquez
CSSO II Paul Baca
CSSO II Brian Stephens
CSSO I Bonnie Richards
CSSO I Jonathon Martinez
CSSO II William M. Day
CSSO I Jerry Tharp
CSSO I Dale Atkinson
CSSO I Bradley Pratt
CSSO Scott
Robert White, RN
D., Westerlage, RN

APPENDIX U

NATIONAL CENTER FOR EDUCATION STATISTICS

Literacy Behind Prison Walls



U.S. Department of Education
Office of Educational Research and Improvement NCES 1994-102

32

NATIONAL CENTER FOR EDUCATION STATISTICS

October 1994

Literacy Behind Prison Walls

U.S. Department of Education
NCES 1994-102

(u2)

U.S. Department of Education
Richard W. Riley
Secretary
Office of Educational Research and Improvement
Sharon P. Robinson
Assistant Secretary
National Center for Education Statistics
Emerson J. Elliott
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EXECUTIVE SUMMARY

This is one in a series of reports that look at the results of the National Adult Literacy Survey, a project funded by the U.S. Department of Education and administered by Educational Testing Service, in collaboration with Westat, Inc. This report, in particular, provides an in-depth look at the literacy skills of prisoners incarcerated in state and federal prisons.

Many past studies of adult literacy have tried to count the number of "illiterates" in this nation, thereby treating literacy as a condition that individuals either do or do not have. We believe that such efforts are inherently arbitrary and misleading. They are also damaging in that they fail to acknowledge both the complexity of the literacy problem and the range of solutions needed to address it.

[Material omitted.]

To gather the information on the literacy skills of inmates, trained staff interviewed nearly 1,150 inmates in 80 federal and state prisons. The prisons were randomly selected to represent prisons across the country, and the inmates themselves were randomly selected from the each of the prisons.

[Material omitted.]

Literacy Practices and Self-Perception

- More inmates than householders reported reading a book within the last six months – 89 percent compared with 83 percent. The types of books most frequently read by inmates are fiction, reference, and inspirational and

religious, while the books most frequently read by householders are manuals, reference, and fiction.

[Material omitted.]



CHAPTER 1

Overview

[Material omitted.]

Defining and Measuring Literacy

The National Adult Literacy Survey is the third and largest assessment of adult literacy funded by the federal government and conducted by ETS. The two previous efforts included a 1985 household survey of the literacy skills of 21 – to 25-years-olds, funded by the U.S. Department of Education, and a 1989-90 survey of the literacy proficiencies of job seekers, funded by the U.S. Department of Labor. [Note omitted.] The definition of literacy that guided the National Adult Literacy Survey was rooted in these preceding studies.

Building on earlier work in large-scale literacy assessment, the 1985 young adult survey attempted to extend the concept of literacy, to take into account some of the criticisms of previous surveys, and to benefit from advances in educational assessment methodology. The national panel of experts assembled to construct a definition of literacy for that survey rejected the types of arbitrary standards – such as signing one's name, completing five years of school, or scoring at a particular grade level on a school-based measure of reading achievement – that have long been used to make judgements about adults' literacy skills. Through a consensus process, this panel drafted the following definition of literacy, which helped set the framework for the young adult survey:

> *Using printed and written information to function in society, to achieve one's goals, and to develop one's knowledge and potential.*

Unlike traditional definitions of literacy, which focused on decoding and comprehension, this definition encompasses a broad range of skills that adults use in accomplishing the many different types of literacy tasks associated with work, home, and community contexts. This new perspective is shaping not only adult literacy assessment, but policy as well. For example, the National Adult Literacy Act of 1991 defined literacy as "an individual's ability to read, write, and speak in English and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals, and to develop one's knowledge and potential."

The definition of literacy from the young adult survey was adopted by the panel that guided the development of the 1989-90 survey of job seekers, and it also provided the starting point for the discussions of the Literacy Definition Committee of the National Adult Literacy Survey. This committee agreed that expressing the literacy proficiencies of adults in school-based terms or grade-level scores is inappropriate. In addition, while the committee recognized the importance of teamwork skills, interpersonal skills, and communication skills for functioning in various contexts such as the workplace, it was decided that these areas are not part of literacy per se and therefore should not be incorporated into the definition of literacy guiding the survey.

Further, the committee endorsed the notion that literacy is neither a single skill suited to all types of texts,

nor an infinite number of skills, each associated with a given type of text or material. Rather, as suggested by the results of the young adult and job seeker surveys, an ordered set of skills appears to be called into play to accomplish diverse types of tasks. Given this perspective, the committee agreed to adopt not only the definition of literacy that was used in the previous surveys, but also the three scales developed as part of those efforts:

Prose literacy – the knowledge and skills needed to understand and use information from texts that include editorials, news stories, poems, and fiction; for example, finding a piece of information in a newspaper article, interpreting instructions from a warranty, inferring a theme from a poem, or contrasting views expressed in an editorial

Document literacy – the knowledge and skills required to locate and use information contained in materials that include job applications, payroll forms, transportation schedules, maps, tables, and graphs; for example, locating a particular intersection on a street map, using a schedule to choose the appropriate bus, or entering information on an application form

Quantitative literacy – the knowledge and skills required to apply arithmetic operations, either alone or sequentially, using numbers embedded in printed materials; for example, balancing a checkbook, figuring out a tip, completing an order form, or determining the amount of interest from a loan advertisement

The literacy scales provide a useful way to organize a broad array of tasks and to report the assessment results. They represent a substantial improvement over traditional approaches to literacy assessment, which have tended to report on performance in terms of single tasks or to combine the results from diverse tasks into a single, conglomerate score. Such a score fosters the simplistic notion that "literates" and "illiterates" can be neatly distinguished from one another based on a single cutpoint on a single scale. The literacy scales, on the other hand, make it possible to explore the various types and levels of literacy among different subgroups in our society. In so doing, they help us to understand the diverse information-processing skills associated with the broad range of printed and written materials that adults read and their many purposes for reading them.

In adopting the three scales for use in the National Adult Literacy Survey, the committees aim was not to establish a single national standard for literacy. Rather, it was to provide an interpretive scheme that would enable levels of prose, document, and quantitative performance to be identified and allow descriptions of the knowledge and skills associated with each level to be developed.

The prose, document, and quantitative scales were built initially to report on the results of the young adult survey and were augmented in the survey of job seekers. The Literacy Definition Committee recommended that a new set of literacy tasks be developed to enhance the scales. These tasks would take into account the following, without losing the ability to compare the results with those of the earlier surveys:

- continued use of open-ended simulation tasks

- continued emphasis on tasks that measure a broad range of information-processing skills and cover a wide variety of contexts
- increased emphasis on simulation tasks that require brief written and/or oral responses
- increased emphasis on tasks that ask respondents to describe how they would set up and solve a problem
- the use of a simple, four-function calculator to solve selected quantitative problems

Approximately 110 new assessment tasks were field tested, and 80 of these were selected for inclusion in the survey, in addition to 85 tasks that were administered in both the young adult and job-seeker assessments. By administering a common set of simulation tasks in each of the three literacy surveys, it is possible to compare results across time and across population groups.

A large number of literacy tasks had to be administered to ensure that the survey would provide good estimates of the literacy proficiencies of the adult population. Yet, no individual could be expected to respond to the entire set of 165 simulation tasks. Accordingly, the survey was designed to give each person participating in the study a subset of the total pool of literacy tasks, while at the same time ensuring that each of the 165 tasks was administered to a nationally representative sample of adults. Literacy tasks were assigned to sections that could be completed in about 15 minutes, and these sections were then compiled into booklets, each of which could be completed in about 45 minutes. During a personal interview, each participant was asked to complete one booklet.

In addition to the time allocated for the literacy tasks, approximately 20 minutes were devoted to

obtaining background and personal information from respondents. Two versions of the background questionnaire were administered, one in English and one in Spanish. Major areas explored included: *background and demographics* –country of birth, languages spoken or read, access to reading materials, size of household, educational attainment of parents, age, race/ethnicity, and marital status; *education* – highest grade completed in school, current aspirations, participation in adult education classes, and education received outside the country; *labor market experiences* – employment status, recent labor market experiences, and occupation; income – personal as well as household; and *activities* – voting behavior, hours spent watching television, frequency and content of newspaper reading, and use of literacy skills for work and leisure. These background data make it possible to gain an understanding of the ways in which personal characteristics are associated with demonstrated performance on each of the three literacy scales. [Note omitted.]

[Material omitted.]

CHAPTER 2

The Prose, Document, and Quantitative Literacy Skills of America's Prisoners

[Material omitted.]

Results for the Prison Population

Thirty-one percent of prison inmates perform in Level 1 on the prose literacy scale, 33 percent are in this level on the document scale, and 40 percent on the quantitative scale. [Table omitted.] This means that approximately 237,000 to 306,000 of 766,000 prison inmates perform in the lowest level on each of the literacy scales. Prison inmates at this level may be able to read short pieces of text to find a single fact, enter personal information on a document, or add numbers that are set up in a column format. Other inmates in Level 1, however, do not demonstrate the ability to perform even these fairly straightforward literacy tasks.

Performing in Level 2 are about 37 percent of prison inmates on the prose scale, 38 percent on the document scale, and 32 percent on the quantitative scale – about 245,000 to 291,000 prisoners. Prisoners at this level on the prose scale can generally make low-level inferences based on what they read and integrate two or more pieces of information. Those in Level 2 on the document scale can locate a piece of information in a document in which plausible but inexact information is present and can integrate information from various parts of a document. Prisoners in Level 2 on the quantitative sale can correctly add, subtract, multiply, or divide simple

numbers found in a text.

Between 22 percent and 26 percent of prisoners – about 169,000 to 199,000 prisoners in all – could perform literacy tasks in Level 3. Prisoners in this level on the prose scale could integrate information from relatively long or dense text, and those in this level on the document scale could integrate multiple pieces of information found in documents. Prisoners in Level 3 on the quantitative scale could perform arithmetic operations using two or more numbers found in printed material.

About 6 percent of inmates, or about 46,000, could successfully perform Level 4 tasks on the prose scale and, thus, could synthesize information from lengthy or complex passages. Four percent, about 31,000, are in Level 4 on the document scale and are able to make inferences based on text and documents. Six percent perform in level 4 of the quantitative scale; they can perform sequential arithmetic operations using numbers found in different types of displays.

Less than 0.5 percent of prison inmates perform in Level 5 on the prose and document scales and about 1 percent on the quantitative scale. To perform in Level 5 on the prose scale, one must contrast complex information found in written materials or make high level inferences or search for information in dense text. Level 5 on the document scale requires readers to use specialized knowledge and search complex displays for particular pieces of information. To achieve this level on the quantitative scale, respondents must determine the features of arithmetic problems either by examining text or by using background knowledge and then perform the multiple arithmetic operations required. Very few inmates, 8,000 or fewer, perform in this level.

[Material omitted.]



CHAPTER 6

Comparing Literacy Practices and Self-Perceptions of the Prison and Household Populations

[Material Omitted.]

Reading Practices

Inmates were asked how often they read or used particular materials: letters or memos; reports, articles, magazines, or journals; manuals or reference books, including catalogs or parts lists; directions or instructions; diagrams or schematics; and bills, invoices, spreadsheets, or budget tables. The household population was asked two versions of the question: once in connection with respondents' personal use and once in connection with their job. Thus, the tables for the household population present data that are an aggregate of personal and job use.

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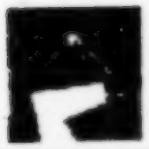


Table 6.1

Percentages of Prison and Household Populations Reporting Frequency of Reading Materials in English[1]

MATERIALS BY POPULATIONS			FREQUENCY		
			Every day or a few times a week	Once a week	Less than once a week
	n	WGT N (/1,000)	RPCT (SE)	RPCT (SE)	RPCT (SE)
Letters, Memos					
Prison	1,145	764	61 (1.5)	14 (1.0)	25 (1.4)

n = sample size; WGT N = population size estimate /1,000 (the sample sizes for subpopulations may not add up to the total sample sizes because of missing data); RPCT = row percentage estimate; (SE) = standard error of the estimate (the true population value can be said to be within 2 standard errors of the sample estimate with 95% certainty).

Source: U.S. Department of Education, National Center for Education Statistics, National Adult Literacy Survey, 1992.

[Material omitted.]

Writing Practices

Inmates were also asked how often they wrote or filled out various kinds of documents: letters or memos, forms, and reports or articles. The household population was also asked how often they wrote or filled out these same materials, but, as with reading practices, they were asked with respect to personal use and job use. Thus, once again the data for the household population are an

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1 Household data is omitted from this table. Data pertaining to written materials apart from letters and memos is also omitted.

aggregate of their response to these two aspects, personal and job.

As shown in table 6.3, about two-thirds of the inmates and about one-third of the householders reported that they write letters frequently, that is, every day or a few times a week. A slightly higher proportion of householders (28 percent) than inmates (23 percent) reported filling out forms frequently. With respect to report writing, a greater percentage of inmates (15 percent) than householders (12 percent) reported engaging in this practice on a frequent basis.



Table 6.3

Percentages of Prison and Household Populations Reporting Frequency of Writing Materials in English[2]

MATERIALS BY POPULATIONS			FREQUENCY		
			Every day or a few times a week	Once a week	Less than once a week
	n	WGT N (/1,000)	RPCT (SE)	RPCT (SE)	RPCT (SE)
Letters, Memos					
Prison	1,146	765	65 (1.4)	13 (1.1)	22 (1.2)

n = sample size; WGT N = population size estimate / 1,000 (the sample sizes for subpopulations may not add up to the total sample sizes because of missing data); RPCT = row percentage estimate; (SE) = standard error of the estimate (the true population value can be said to be within 2 standard errors of the sample estimate with 95% certainty).

Source: U.S. Department of Education, National Center for Education Statistics, National Adult Literacy Survey, 1992.

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2 Household data is omitted from this table. Data pertaining to written materials apart from letters and memos is also omitted.

Although a greater percentage of inmates than householders reported writing letters or memos frequently, their proficiency scores on the prose scale are lower than those householders, 258 and 289 respectively. [Table omitted.] The proficiency of inmates who write letters infrequently is 213, while that of householders who write infrequently is 257, which is about the same as that of inmates who write frequently. The pattern of scores is similar on the quantitative scale for filling out forms and on the prose scale for writing reports: the proficiency of householders who engage in these practices less than once a week are comparable to that of inmates who engage in them frequently.

[Material omitted.]

Reading Books

The frequency of literacy practices is one important indicator of how literacy skills are put to use. Another dimension is the extent to which individuals report reading book-length materials. Both the prison and household populations were asked which types of books they had read within the last six months. [Table omitted.]

Only 11 percent of the inmates reported not reading any book within the last six months, compared with 17 percent of the householders. While these nonreaders from both populations, on average, perform in Level 1, the proficiency scores of householders are significantly higher than those of inmates on both scales – 24 points higher on the prose scale and 40 points on the document scale. Inmates who reported not having read any books demonstrate such low skills that they would have trouble with anything other than very simple texts or

very explicit locate tasks.

[Material omitted.]

Collaboration

Another way to determine how adults view their ability to read and write is to ask how often they receive help on various literacy-related tasks. Both inmates and householders were asked how frequently they get help with the following tasks:

- filling out forms
- reading newspaper articles or other written information
- reading printed information associated with government agencies, public companies, private business, hospitals, etc.
- writing notes and letters
- using basic arithmetic, such as when filling out forms

As shown in table 6.10, about the same percentage of inmates reported getting no help with writing notes and using arithmetic (about 80 percent), while a lower percentage (about 60 percent) reported getting no help with filling out forms and reading printed information. When compared with the household population, more inmates than householders reported getting no help with all tasks except using arithmetic. Generally, more householders than inmates reported getting some or a little help for all tasks except using arithmetic. What we cannot know from these data is whether inmates do not think they need help or whether the prison environment is not conducive to their seeking the help they need.

As shown in table 6.11 [table omitted], those in

both populations who reported getting a lot of help consistently demonstrate average proficiencies in the range of Level 1, regardless of the task. Even so, the proficiency scores of prisoners who get a lot of help are significantly lower than those of their counterparts in the household population for all tasks on all scales, with the exception of writing notes. These inmates truly seem to need to help since their proficiency scores indicate that they are able to perform, on average, only the simplest of tasks in Level 1.



Table 6.10

Percentages of Prison and Household Populations Reporting Frequency of Getting Help with Various Tasks[3]

TASKS BY POPULATIONS			FREQUENCY			
			A lot	Some	A little	None
	n	WGT N (/1,000)	RPCT(SE)	RPCT(SE)	RPCT (SE)	RPCT (SE)
Writing Notes, Letters						
Prison	1,140	760	7 (0.9)	6 (0.6)	8 (0.8)	80 (1.3)

n = sample size; WGT N = population size estimate /1,000 (the sample sizes for subpopulations may not add up to the total sample sizes because of missing data); RPCT = row percentage estimate; (SE) = standard error of the estimate (the true population value can be said to be within 2 standard errors of the sample estimate with 95% certainty).

Source: U.S. Department of Education, National Center for Education Statistics, National Adult Literacy Survey, 1992.

[Material omitted.]

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3 Household data is omitted from this table. Data pertaining to written materials apart from letters and notes is also omitted.